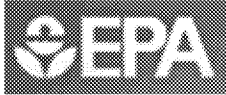


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EPA Region 3 Headlines

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...electric sector "shows encouraging results," the Department of Energy and Environmental Protection said. Proposed new gas projects...
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DE (1)

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The U.S. Environmental Protection Agency serves a vital role as we coordinate the efforts of federal, state and local partners to...
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...measure, it was the best start of his career thus far. By TruMedia's EPA per play, it was better than all but one game by an...

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...direct federal agencies on regulating emission cuts. "It is clear that EPA -- the agency primarily responsible for emissions...
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...in order to keep the systems up-to-date and to address mandates from the Environmental Protection Agency. Another ordinance...

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...has reported. The town has already received a \$500,000 grant from the U.S. Environmental Protection Agency and officials say...

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Smart Cities Dive

...electric sector "shows encouraging results," the Department of Energy and Environmental Protection said. Proposed new gas projects...

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Ida Recovery Makes Slow Progress
09/07/2021
International Oil Daily

Most offshore oil and natural gas production in the Gulf of Mexico remained shut in on Tuesday, more than a week after Hurricane Ida passed through the region.

Onshore crews continued efforts to restore power to the hard-hit Gulf Coast communities that serve as a launching pad for many offshore operations as companies tried to assess some of the longer-term impacts of the storm (OD Sep.3'21).

Over 79% of oil production, or about 1.4 million barrels per day, remained shut in Tuesday, down from almost 84% on Monday, according to the Bureau of Safety and Environmental Enforcement (BSEE).

Nearly 78% of gas production was still off line, or about 1.7 billion cubic feet per day, down from about 81% a day ago.

Hurricane Ida Upstream Impact

Date Platforms Off Line % of Total % of Total % of Total

8/26 0 0.0% 0 0.0% 0 0.0%

8/27 89 15.9 1,065 58.5 1,088 48.8

8/28 279 49.8 1,653 90.8 1,893 84.9

8/29 288 51.4 1,741 95.7 2,091 93.8

8/30 288 51.4 1,722 94.6 2,087 93.6

8/31 278 49.6 1,705 93.7 2,107 94.5

9/1 NA -- NA -- NA --

9/2 177 31.6 1,703 93.6 2,035 91.3

9/3 133 23.8 1,699 93.3 1,990 89.2

9/4 119 21.3 1,684 92.5 1,915 85.9

9/5 104 18.6 1,607 88.3 1,845 82.7

9/6 99 17.7 1,526 83.9 1,801 80.8

9/7 79 14.1% 1,444 79.3% 1,737 77.9%

Royal Dutch Shell said in an update that about 80% of its operated production is still shut in, largely due to the damaged transfer station at West Delta-143, which handles about 200,000 boe/d from three large deepwater platforms -- Mars, Ursa and Olympus (OD Sep.2'21).

Those three all remain off line and evacuated, as does Shell's Appomattox platform.

We are working to understand the full extent of the damage and the degree to which production in the Gulf of Mexico will be impacted, Shell said.

The company said it is beginning the process of redeploying personnel to its Auger asset and is continuing redeployment to its Enchilada/Salsa asset, although both remain shut in.

Platform start-up will remain dependent on the availability of downstream infrastructure including pipelines and delivery locations, Shell said.

BP and Chevron, the two other largest Gulf operators, did not have an update on Tuesday and did not respond to requests by press time.

Hess said it may have an update later in the week.

Murphy Oil said it has no comment yet on quarterly or full-year production guidance.

We are assessing our facilities, re-manning our platforms and in the early stages of restoring our production, a spokeswoman said.

The Gulf accounts for around 16% of total US oil production and 5% of natural gas output.

Oil Spill Response

Meanwhile, independent operator Talos Energy said it is working to contain an oil spill in Louisiana state waters, apparently stemming from a 12-inch-diameter subsea pipeline that ruptured during the storm.

While the assets no longer belong to Talos, the company said it has chosen to lead response efforts after US

authorities notified it of the spill on Bay Marchand Block 5.

Talos was the prior operator of the block but ceased production there in 2017; it had removed all of its owned pipeline infrastructure by 2019.

On Monday, response teams installed a containment dome on the affected pipe, which allows for the recovery of the release and transfer to surface vessels, Talos said.

A timeline for repair operations is still being determined, Talos said.

The US Coast Guard said it is monitoring multiple oil spills in Ida's wake, including the one in Bay Marchand. It said it has observed no active discharge or any impacts to shore from the oil release.

It did not have an estimate for how much oil has spilled as a result of the storm damage.

Downstream Coming Back

Refineries in Louisiana were slowly coming back on line.

Four refineries have initiated a process to resume production while five others have yet to restart, according to the Department of Energy (DOE).

Those four account for about 1.3 million b/d of refining capacity coming back on line, which means the majority of shuttered capacity is in some stage of the restart process.

All three refineries in the Baton Rouge area and one near New Orleans ... have initiated the restart process, although the refiners will not produce at full rates for several days, DOE said in an update Tuesday.

The Environmental Protection Agency said Tuesday that it has issued an emergency fuel waiver for Port Fourchon, Louisiana. The waiver, which applies to marine fuels, means shippers can temporarily run regular fuel oil near the port, rather than very-low-sulfur fuel oil.

The move is aimed at smoothing logistical hurdles and getting crude to the refiners. The waiver extends from Sep. 6-16.

The port said over the weekend that tenants now have full access to return to their facilities, and work is progressing to get the port back up and running.

Luke Johnson, Houston, with Frans Koster, New York

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Baltimore Post, The

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...the Maryland Department of the Environment, U.S. Coast Guard and U.S. Environmental Protection Agency, who sent inspectors to...

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...FX4 Off-Road Package, and equipment group 300A. According to the EPA, this vehicle will cost its owner \$500 more in fuel costs over...

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Advanced BioFuels USA

...text allows the option for DOE to be involved in conducting LCA with EPA, Ways and Means requires any U.S.-based LCA to “meet the...

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Clean Air Council appeals on construction of natural gas-fired power plant**09/14/2021*****Pittsburgh Business Times***

The Clean Air Council is challenging the Pennsylvania Department of Environmental Protection over a potential natural gas-fired power plant that is being considered in Washington County.

Clean Air Council filed its notice of appeal to the Environmental Hearing Board over what it said was DEP's revival of a previous approval after dismissing a later application for the 1,000-megawatt Beech Hollow gas-fired power plant in Robinson Township, Washington County. Robinson Power Co. LLC, which would own the plant, had received a modified air quality plan approval from the DEP on June 14. Construction had begun on the plant, according to DEP documents.

But a modified approval plan that had been submitted after June 14 was stopped by DEP at the request of Robinson Power, and under the terms of the previous approval construction could resume as long as it begins by March 28, 2022.

In its appeal filed Tuesday, Clean Air Council disputed that DEP could allow the previous approval to move forward. It said the previous approval no longer existed once the modified approval plan was submitted.

"The Department cannot put a new plan approval in place without following all regulatory processes for the issuance of a new plan approval, regardless of whether the new plan approval is identical to a previous plan approval," Clean Air Council said.

Clean Air Council said that allowing the construction and operations of the natural gas plant without approval would be at odds with the Air Pollution Control Act and the Clean Air Act. It also said that other procedures haven't been followed.

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Conditions evolving on the Schuylkill River Trail

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Philadelphia Inquirer, The

Hurricane Ida left the Schuylkill River Trail underwater, and while the floodwaters have since drained, some sections of the area's most popular running and cycling trail remain impassable.

Trail conditions are evolving. The 75-mile trail stretches through Philadelphia and Schuylkill, Montgomery, Chester, and Berks Counties. Check with your local county's Parks and Recreation department for the latest conditions.

Here's what to know if you're looking to travel the trail in the coming days.

See SCHUYLKILL on C3

Continued from C1

Trail conditions by county

Philadelphia

Thanks to cleanup efforts by city workers, community organizations, and volunteers, the SRT section that stretches through the city has mostly reopened. Martin Luther King Drive (west of the Schuylkill River and on the opposite side of the SRT) is now fully open to pedestrians, too.

However, the Manayunk Canal towpath, a two-mile stretch between Lock Street and Shawmont Avenue, remains closed for repairs.

Philadelphia Parks and Recreation says a timeline for reopening is still being determined, and significant cleanup remains, including the removal of over a foot of silt, mud, and sediment in some parts of the trail, in addition to boardwalk repair and replacement of fencing that secures the trail from the Manayunk Canal.

"This section experienced significant damage and is dangerous for passage on foot or bicycle," says Maita Soukup, Philadelphia Parks and Recreation director of communications.

Montgomery

This week, some parts of the SRT that run through Montgomery County temporarily reopened. However, due to safety concerns, all sections of the trail in Montgomery County are now closed. This includes from the Manayunk Towpath through Phoenixville and out to Pottstown. A reopening timeline has not been set.

"Trail use at this time can actually hamper and slow down our efforts," says Kelly Cofrancisco, communications director for Montgomery County.

Berks and Schuylkill

The section of the SRT that runs through Berks and Schuylkill Counties was not damaged as much by Hurricane Ida as in other areas and is now fully open.

Alternate routes

If SRT closures are cutting your bike ride short, there are plenty of other great routes across the region. Check out the Philadelphia Bicycle Coalition's route library to get started, which maps out rides ranging from one to 80 miles. For a longer ride, Amanda Ruffner, communications manager for the Philadelphia Bicycle Coalition, recommends the 15-mile Navy Yard / FDR Park / Stadiums loop or the 23-mile Ben Franklin Bridge / Cooper River loop.

Preparing for dusty or muddy riding conditions

While much of the SRT is now reopened, sand, silt, and mud are still present in many areas of the trail. This can make for a dustier and slower ride for cyclists. "It's definitely doable. I saw a lot of people out on Indigo bikes and other non-mountain bikes, but I'd consider the weather just because of how dusty it is," says Ruffner, noting that rain can create muddier and more dangerous conditions.

Until all remaining mud and debris is cleared, trail users are encouraged to use extra caution. Ruffner recommends cyclists wear sunglasses or another form of eye protection. "You might even want to bring a neck gaiter or mask depending on how windy it'll be during your ride," she says.

You should also carry a fix-a-flat kit or other tire repair tools. It's a good item to have on all rides, but with the extra debris currently on the SRT, your tires are even more susceptible to punctures.

"Try to ride when visibility is good so the sandy parts don't sneak up on you," says Ruffner. "From personal experience it was much harder to notice the sandy parts later in the evening."

Slow down if you're forced to navigate muddy or sandy patches, and pay extra consideration to other riders, especially when passages narrow due to mud and debris. Currently on the Philly side of the SRT, the trail narrows both across from the entrance to the Laurel Hill Cemetery and around the construction bollard after the East Falls Bridge. "By far the sandiest part is right before the Columbia Train Bridge," Ruffner says, noting that you may need to dismount and briefly walk, depending on the style of your bike.

As for all closed sections of the SRT, you're urged to stay off the trail for your own safety. This applies to not just cyclists, but runners and walkers, too. According to the EPA, flood water residue contains pathogens, parasites, and chemicals.

"It's also important to avoid closed areas to be respectful of and not disrupt the cleanup operations - folks are putting a lot of hard work into getting these areas back into good and safe shape for public use," says Ruffner.

Help with the cleanup

Schuylkill River Greenways National Heritage Area plans to organize several volunteer work days in Berks and Montgomery Counties. Call (484-945-0200) or email (info@schuylkillriver.org) to find out about upcoming opportunities.

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STREAM STABILIZATION TO BEGIN IN BETHEL PARK

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Pittsburgh Post-Gazette

A stream stabilization project will begin this month along a 350-foot stretch of bank on Saw Mill Run off Milford Drive in Bethel Park.

Municipal officials ceremoniously broke ground for the project Thursday, and the endeavor is expected to take about two months to complete.

The project will help to mitigate the erosion problem occurring within the headwaters of the stream, said Bethel Park engineer Stacey Graf. The project will also help reduce sediment in Saw Mill Run.

"Many streams in Western Pennsylvania have highly eroded banks, property being lost, fallen trees, exposed sewers and vegetation being swept away," Ms. Graf said.

"As the severity of the rainfall events are changing, this scenario is playing out all over the municipality," she added.

According to Gateway Engineering Consultant Scott Baker, boulder cascades, log rollovers and root wads will all be used within the stream to slow the water's velocity and decrease erosion of the stream's bank.

Gateway Engineering designed the project for the municipality.

The project is funded in part by a Growing Greener Grant from the Pennsylvania Department of Environmental Protection.

Deana Carpenter, freelance writer: suburbanliving@post-gazette.com

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CSVT southern section will be reviewed by Federal Highway Administration
09/13/2021
Danville News

The Federal Highway Administration will soon review PennDOT's plans for the southern section of the Central Susquehanna Valley Transportation project, according to PennDOT.

Matt Beck, a PennDOT assistant plans engineer, updated members of the Greater Susquehanna Valley Chamber of Commerce Transportation Committee on Friday on where the southern section of the \$865 million CSVT project stands. Last month, Beck announced that the state Department of Environmental Protection, the U.S. Army Corps of Engineers and the Snyder County Conservation District finished their review of the projects and issued approval and permits.

"With permits in hand, we have recently been able to put some finishing touches on plan details that are necessary to satisfy our environmental requirements," said Beck. "We've also had those plans reviewed by our central office and we'll soon have them reviewed by FHWA as well to confirm we're ready to advertise for bids when we've obtained right-of-way and utility clearances."

Beck said 80 percent of the landowners have been settled for right-of-way acquisition and negotiation. PennDOT is also working with utility companies to raise or shift lines along the route, he said.

"Overall, we made good progress this year and we remain on track for work under that first construction contract in that southern section to start next year," said Beck.

The first contract will involve 5 million cubic feet of earthwork. The second contract will involve the construction of nine bridges and noise barriers. The third will be the paving and the interchange at existing Routes 11/15 and 522, he said.

"Each contract will take roughly two years to complete, with the first contract to start next year," said Beck. "We continue to anticipate the southern section will be completed and open to traffic in 2027 as we've been targeting."

Ted Deptula, the assistant construction engineer for PennDOT District 3-0, said concrete is in place and crews are putting asphalt over the northern section of the project until it's finished in October. The final piece of the project will be constructing the southbound lane between Route 405 and the four-lane section of Route 147 south of Montandon.

The northern section with the \$156 million river bridge will be ready for drivers in 2022. Deptula anticipates a fall opening.

"It's been a long time coming and we're nearing the end," said Deptula.

Jim Saylor, director of the SEDA Council of Governments, said the results of a CSVT study on economic development along the route will be revealed on Monday. The virtual meeting will be held live at 6 p.m. on www.lyco.org/csvt.

Transportation Committee Chair Joe McGranaghan, also the mayor of Shamokin Dam, said the project has been "a community effort" over the last four decades.

"This project has been one of the best examples of bipartisanship that could possibly be out there," he said.

Both Democratic and Republican legislators and elected officials have teamed up to make the project a reality, said McGranaghan.

"It's an exciting time to be in this area and I think we're going to see some exciting changes as this project comes online," he said.

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After Years Of Debate, Some Seek Return To Original WOTUS Policies

09/14/2021

Defense Environment Alert

September 8, 2021 Two decades after the Supreme Court first targeted EPA's regulatory definition of the waters of the United States (WOTUS), some groups are urging Biden officials to return to the original measures that were in place at the time though industry and environmentalists are pushing for a return to the Trump or Obama definitions, respectively.

In recently filed comments, drinking water utilities say neither the Trump nor Obama administrations adequately addressed some of their concerns and as such, recommend a return to pre-2015 policies.

This includes rules and other policies promulgated in the 1980s and further interpreted by guidance issued after the Supreme Court's 2001 ruling in *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers* and the high court's subsequent 2007 ruling in *Rapanos v. United States*.

Wetland and stream mitigation providers are echoing this approach, saying it offers the best option for durability.

By contrast, industry and environmental groups continue to spar over whether the Trump-era rule, known as the Navigable Waters Protection Rule (NWPR), or the Obama-era regulation, known as the Clean Water Rule, are the best interpretations of the CWA's scope, with some modifications.

For example, the American Petroleum Institute in Sept. 3 comments encourages the agencies "to retain the overarching principles of the" NWPR, which the organization says it believes properly implements the overall objective of the CWA "to restore and maintain the integrity of the nation's waters, as Congress has determined should be federally regulated under its Commerce Clause powers, while adhering to Congress's policy directive to preserve States' primary authority over land and water resources."

The American Farm Bureau Federation makes similar points in its Sept. 3 comments, saying that rather than expending resources on a new rulemaking, the agencies should focus on other CWA actions to improve water quality.

And, the Southern Environmental Law Center (SELC), representing 85 environmental organizations, urges the agencies in Sept. 2 comments to promulgate a new WOTUS definition that goes beyond the Obama rule.

A new WOTUS rule should incorporate the scientific literature published in, and since, EPA's 2015 Science Report; identify and address the potential impacts of any revised definition of WOTUS on environmental justice communities; factor in the implications of climate change; restore a science-based, functional approach to the determination of stream and wetland jurisdiction; restore the jurisdictional category for "interstate waters"; and modify or eliminate several harmful exclusions that appear in the NWPR, SELC says.

The Biden administration is continuing to emphasize its desire to craft a "durable" WOTUS definition to avoid continuing the pendulum swings that have occurred during the Obama, Trump and the current administrations, but former EPA water officials have questioned whether a middle-ground approach is possible.

Late last week, EPA and the Army of Corps of Engineers halted implementation of the Trump-era definition and returned to pre-2015 policies after a federal judge in Arizona vacated and remanded the rule, even though the legal question of whether a district court can vacate a national rule remains unsettled.

As an initial step in its planned rulemaking process, EPA and the Corps took comment on nine specific aspects of defining WOTUS, including implementation; the scope of adjacency, jurisdictional tributaries and jurisdictional ditches; climate implications; environmental justice considerations and exclusions from the definition.

Concerns Not Addressed

In its Sept. 3 comments, the American Water Works Association (AWWA), which represents a variety of drinking water utilities, says that it remains concerned about several issues that have not been addressed or only partially addressed in previous WOTUS rulemakings.

AWWA says it has noted these concerns in comments on the Obama administration's Clean Water Rule proposal, the first and second rounds of comments on the Trump administration's proposal to repeal the Clean Water Rule, in the Trump administration's request for comments on the "direct hydrologic connection to surface water" and in comments on the proposed NWPR.

"The below comments build upon the themes and concerns mentioned throughout these previous rulemakings. As many of these concerns remain, these comments build heavily off of those past submissions with additional information introduced or adjusted based upon new information," AWWA says.

Among the utilities' recommendations is that EPA and the Corps should reaffirm and retain the pre-2015 rules. A common theme woven across AWWA's prior comments is the need for EPA and the Corps to balance the importance of the CWA as a critical tool for protecting sources of drinking water with the need for expedited and straightforward permitting to allow efficient water infrastructure construction and maintenance, the utilities say.

To achieve this, the agencies should retain the post-SWANCC status quo practice, which the Biden administration has referred to as the pre-2015 rules, AWWA says. And EPA and the Corps can accomplish this by completing a rulemaking designed to return the post-SWANCC status quo definition and withdrawing the current rulemaking or modifying it to conform to post-SWANCC practice with additional guidance based upon Rapanos, they say.

"We believe this is the most appropriate mixture of protecting sources of drinking water and streamlining infrastructure and permitting among the options currently being considered," AWWA says.

Moving forward, EPA and the Corps should focus exclusively on updating the 1986/1988 regulatory definition to fully conform to current practice, including post-SWANCC and post-Rapanos guidance, the comments say. "This pathway would lead to regulatory certainty by reducing the reliance on what many stakeholders consider to be a challenging set of legal opinions and guidance documents for decision-making," AWWA says. "However, in achieving this regulatory certainty there would be a need only to fully conform this rule and associated guidance with the pre-2015 rule practice, thereby continuing to provide protection of sources of drinking water while minimizing economic impacts, consistent with Executive Order 13990."

AWWA also says meaningful stakeholder engagement and appropriate analysis is essential and that the agencies should consider delayed implementation of a new WOTUS definition. "This will allow time for states to adjust their statutes and regulations to address changes to federal environmental and public health protections and will give impacted entities (including water sector utilities) time to analyze the potential impacts of the change and take action to address any specific concerns that will arise from it," AWWA says.

Other recommendations from AWWA include providing exemptions necessary for water infrastructure, continuing to review and update nationwide permits, and retaining coverage of "direct hydrologic connections" to surface water.

AWWA says it generally agrees that groundwater should not be included in the definition of WOTUS but discharges which have a direct hydrologic connection to surface waters are the exception. Without this essential protection, discharges could be rerouted to discharge in the subsurface and flow into surface waters without a National Pollutant Discharge Elimination System permit, which would clearly circumvent the intent of the CWA and should be prevented by retaining this permitting coverage.

Mitigation Providers

The Ecological Restoration Business Association (ERBA), which represents wetland and stream mitigation providers,

also urges EPA and the Corps in Sept. 3 comments to return to the pre-2015 approach, saying this offers the best option for durability.

The organization says it is pleased the agencies plan to restore the pre-2015 interpretation as a first step, saying the pre-2015 definition "represented an era of relative stability in jurisdictional interpretations when permittees and mitigation providers had enough predictability to invest in mitigation needs."

The group warns that regulatory uncertainty limits investments in its members' projects, limiting supply of credits to regulated entities and slows permitting of key infrastructure projects.

"This regulatory uncertainty dis-incentivizes investment in wetland and stream restoration and subsequently places growth in the broader ecological restoration industry--an estimated \$25 billion in annual economic output and 225,000 jobs--at risk," ERBA says.

The group also criticizes the Trump-era definition while noting it was easier to implement the Obama-era rule. "ERBA members have seen Corps' District project managers struggle with, and vary in, their interpretations of a 'typical year' and 'ephemeral' versus 'intermittent' tributaries," key terms in the NWPR for determining what waters are covered by the CWA, the comment says.

In multiple instances, ERBA members have been on site with up to three Corps regulators conducting a jurisdictional determination and, even after several hours of deliberation, the regulators still cannot decidedly agree on how to classify the aquatic features on that tract, especially in the western United States where precipitation conditions for water bodies are in flux due to extreme weather events and climate change, the comments say.

"This current situation under the NWPR is ripe for case-by-case and subjective decisions that result in a patchwork of jurisdiction and regulatory inconsistency for permittees and mitigation providers," ERBA says. -- Lara Beaven (lbeaven@iwpnews.com)

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EPA & Corps Revert To Pre-2015 WOTUS Regime Following Vacatur Ruling

09/14/2021

Defense Environment Alert

September 7, 2021 EPA and the Army Corps of Engineers have halted implementation of the Trump-era definition of waters of the United States (WOTUS) and returned to pre-2015 policies after a federal judge in Arizona vacated and remanded the rule last week, even though the legal question of whether a district court can vacate a national rule remains unsettled.

"The Environmental Protection Agency and U.S. Army Corps of Engineers (the agencies) are in receipt of the U.S. District Court for the District of Arizona's August 30, 2021, order vacating and remanding the Navigable Waters Protection Rule in the case of Pascua Yaqui Tribe v. U.S. Environmental Protection Agency," EPA says on its website.

"In light of this order, the agencies have halted implementation of the Navigable Waters Protection Rule [NWPR] and are interpreting 'waters of the United States' consistent with the pre-2015 regulatory regime until further notice," the statement continues.

That means the agencies are returning to various policies written during the 1980s and 1990s, but which were thrown into doubt after a series of Supreme Court rulings in the 2000s, which prompted the Obama administration, and later the Trump administration, to re-write the policies governing the reach of the Clean Water Act.

Now the Biden administration is again reconsidering the issue, with EPA saying in its statement that the review of the court order and consideration of next steps "includes working expeditiously to move forward with the rulemakings announced on June 9, 2021, in order to better protect our nation's vital water resources that support public health, environmental protection, agricultural activity, and economic growth."

EPA and the Corps remain committed to crafting a durable WOTUS definition "that is informed by diverse perspectives and based on an inclusive foundation," the statement adds.

EPA's announcement appears to indicate that the agencies are interpreting the Arizona court's vacatur as applying nationally. And it is possible that the Biden administration's plan to formally repeal the Trump-era WOTUS definition before crafting its own WOTUS rule will treat the repeal rule process as merely "ministerial," as EPA did when it repealed the Trump administration's science rule, a former EPA attorney says.

But subsequent decisions from other federal district court judges in the days after the Aug. 30 ruling, as well as ongoing briefing in some remaining challenges to the Trump-era rule, indicate the legal question of whether district courts can issue national vacatur remains unsettled.

The former EPA attorney says that if the Aug. 30 ruling from Judge Rosemary Mâ€™rquez of the U.S. District Court for the District of Arizona vacated the rule nationwide, the rule no longer exists, and any pending case no longer presents a live controversy for a court to adjudicate.

"If another judge issues a decision on the Navigable Waters Protection Rule -- even one that also concludes the rule must be vacated -- it is an indication that the Arizona court's vacatur is not nationwide and that the NWPR is still in effect in the majority of the country," the former EPA attorney said prior to EPA's announcement that it was halting implementation of the Trump-era rule.

While EPA and the Corps have asked several district courts to remand the Trump-era rule without vacatur, Judge Mâ€™rquez said in her ruling that precedent from the U.S. Court of Appeals for the 9th Circuit, which is binding on her court, and potential environmental harms from leaving the rule in place weighed in favor of vacatur.

Other Courts

Following Mâ€™rquez's ruling, two other district court judges have granted the agencies' request to remand the rule without vacatur.

Judge Douglas P. Woodlock of the U.S. District Court for the District of Massachusetts remanded the rule without vacatur Sept. 1 in the case Conservation Law Foundation (CLF) v. EPA, et al.

In his brief ruling, Woodlock notes that this is one of a number of cases filed in various U.S. district courts through the

nation challenging the Trump-era rule, and that EPA and the Corps have announced their intent to revise the NWPR.

CLF, like many of the other plaintiffs challenging the NWPR in other cases, sought to have the NWPR vacated as well as remanded, but Woodlock declined.

"Given the progress of related litigation elsewhere, I believe the most prudent step to resolve this case in this court is to grant the request for voluntary remand and dismiss this case without independently vacating the challenged Rule," Woodlock writes. "In this connection, I note that the United States District Court for the District of Arizona has earlier this week addressed the salient issues by vacating the Rule which is the subject of this litigation and ordering prompt further briefing concerning" the Trump administration's rule repealing the Obama-era WOTUS definition.

Woodlock continues, "The most orderly means for me to assist in resolving the larger dispute over the Rule at issue is to remand this case to the agencies and correlatively dismiss it without separately addressing the merits as to which the litigation is in an advanced stage in the District of Arizona."

Additionally, Senior Judge Lawrence E. Kahn of the U.S. District Court for the Northern District of New York in a text-only order Sept. 7 granted EPA and the Corps' unopposed motion for voluntary remand of the NWPR in *William Murray & Jane Omura v. Regan*. "It is ordered that the Navigable Waters Protection Rule is REMANDED without vacatur," the text order says, adding that a pending motion from the Institute for Policy Integrity at New York University School of Law to file an amicus curiae brief is denied as moot.

However, other courts that are considering the issue have yet to rule, leaving the door open for additional vacatur.

Chief Judge Richard Seeborg of the U.S. District Court for the Northern District of California, who is bound by the same 9th Circuit precedents as *Mâ€™rquez*, had been scheduled to hear oral argument Sept. 9 in a pair of challenges to the NWPR.

But in Sept. 2 text notices in the dockets of the two cases, the court staff says Seeborg will consider the agency's motions for remand without vacatur without a hearing.

Environmental groups in *Waterkeeper Alliance, et al. v. EPA, et al.*, and 17 Democratic state attorneys general (AGs) in *California, et al. v. Regan, et al.*, have urged Seeborg to also vacate the rule, pointing to 9th Circuit precedent, which is binding on the northern California court as it is on the Arizona court.

In the case brought by the Democratic AGs, the plaintiff states filed a Sept. 2 notice with the court in California, pointing to *Mâ€™rquez*'s Aug. 30 vacatur while the Justice Department, representing EPA and the Corps, filed a Sept. 3 notice highlighting the remand without vacatur decision from the court in Massachusetts.

DOJ also filed a Sept. 3 notice in the *Waterkeeper* litigation mentioning both the remand without vacatur from the Massachusetts court and the remand with vacatur from the Arizona court.

The Navajo Nation, in its challenge to the NWPR pending in the U.S. District Court for the District of New Mexico, also filed Sept. 1 a similar notice of *Mâ€™rquez*'s vacatur ruling while DOJ Sept. 3 filed a notice of the Massachusetts' court's remand order.

Meanwhile, in *Environmental Integrity Project (EIP) v. Regan*, pending in the U.S. District Court for the District of Columbia, EIP filed a Sept. 3 response partially opposing the agencies' request for remand without vacatur.

"While Plaintiffs agree that the rule must be remanded, they do not agree that remand without vacatur is appropriate, and respectfully request that this Court either remand and vacate the rule or deny the motion and proceed to the merits of this matter," EIP says.

A coalition of industry groups that are intervenor-defendants in the litigation filed a Sept. 3 response supporting the agencies' motion for remand without vacatur, saying the NWPR is a lawful interpretation of the Clean Water Act and that vacating the rule "pending the anticipated new administrative rulemaking would disrupt business operations, and with them the national economy." -- Lara Beaven (lbeaven@iwpnews.com)

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EPA EXPANDS AIR MONITORING IN IDA'S AFTERMATH, SEEKING EXCESS EMISSIONS

09/14/2021

Risk Policy Report

Posted September 13, 2021

EPA announced it will expand air monitoring in Louisiana communities impacted by Hurricane Ida to determine whether industrial facilities are releasing excess emissions.

The Sept. 9 announcement by EPA Region 6 says the agency will begin air sampling using its ASPECT aircraft to assess potential releases at industrial plants as power is restored. EPA is also restarting chloroprene community air monitors near the Denka Performance Elastomers in La Place, St. John the Baptist Parish. The monitors were secured before the hurricane made landfall to prevent damage.

The extra monitoring was requested by the Louisiana Department of Environmental Quality (LDEQ), EPA says.

EPA will also use summa canisters to sample for volatile organic compounds (VOCs), including Tentatively Identified Compounds (TICs), and will use additional monitors for fine particulate matter (PM2.5).

The canisters will measure VOCs and TICs using 24-hour samples, while PM2.5 will be measured through continuous monitoring.

Sampling will be done under strict EPA protocols and results will be posted within 10 days on the agency's Ida website. The effort is part of the administration's priority to address environmental justice.

EPA's Office of Compliance & Enforcement has issued 10 information requests to facility operators to determine compliance with federal environmental laws during Hurricane Ida. "EPA will continue this effort and violations will result in federal enforcement and penalties," the agency says.

In addition to the Denka plant, other locations that will be among the first to have extra monitoring are a Shell refinery in Norco, a Marathon refinery in Garyville, LDEQ's Irish Channel air monitoring site and Port Fourchon.

EPA also continues to review reports of spills and releases that include 43 notifications of inland spills and releases. The U.S. Coast Guard receives notices of coastal spills.

The federal effort is intended to augment LDEQ's on-the-ground resources, with the state also conducting additional monitoring, the agency says.

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EPA EYES DATA DRIVE TO EVENTUALLY STRENGTHEN POWER PLANT MERCURY RULE

09/14/2021

Risk Policy Report

Posted September 8, 2021

EPA's imminent proposal restoring the prerequisite legal finding that it is "appropriate and necessary" (A&N) to regulate air toxics emissions from power plants is expected to include an information-gathering drive to facilitate a possible future tightening of its landmark mercury and air toxics standards (MATS), sources say.

While EPA is widely expected to reverse a Trump-era rule that scrapped the underlying A&N finding, and reinstate it bolstered by new information on costs and benefits, the MATS rule's long-term future is less clear.

A proposal to restore the legal underpinning of MATS is now undergoing White House Office of Management and Budget (OMB) review, and various groups are seeking to sway OMB and the agency to also tighten emissions limits.

But tougher limits will likely have to await the results of a request for information to be included in the proposal, sources say. And while some in industry are reserving judgment on potential tighter limits, others in the power sector or that support the coal industry are likely to oppose stronger standards.

"I think they'll end up asking for comment" on tightening emissions limits, Bracewell attorney Jeffrey Holmstead, a former George W. Bush-era head of EPA's air office, tells Inside EPA Sept. 8.

"I don't think you'll see a proposal to change the MATS limit and instead they will seek information on whether EPA should revisit" emissions limits.

Holmstead's remarks echo a statement from acting EPA air chief Joe Goffman, who told members of the agency's Clean Air Act Advisory Committee July 21 that the proposal will consider whether "we have all the information we need on costs and technology that would merit potentially tightening the technology standards."

EPA's current reconsideration includes both the Trump EPA's determination that it is not, in fact, "appropriate" to regulate power plant air toxics emissions under Clean Air Act section 112, and also its risk-and-technology review (RTR) for the sector that found no "residual" health risks from the sector, and left technology-based emissions standards unchanged.

Two more industry attorneys also say they expect EPA to launch an information-gathering drive on a potential tightening of the standards based on a revised RTR for the sector, but not to propose tougher standards for now.

EPA is expected to act swiftly only on the first part of the Trump rule, using updated cost and benefit information to make the case that it is appropriate and necessary to regulate.

The Trump EPA took the position that although the underlying finding was wrong, legal precedent in the U.S. Court of Appeals for the District of Columbia Circuit would make it extremely difficult to scrap MATS itself. This is because "de-listing" power plants as a source of hazardous air pollutants (HAPs) would be required, and D.C. Circuit precedent makes this very hard.

But supporters of MATS, including prominent Democrats, say this was always a disingenuous position designed to open MATS to legal challenges, such as those brought by some coal-sector groups. Restore The Finding

Environmental groups and a group of state attorneys-general led by Massachusetts are reiterating their opposition to the Trump rule and support for MATS, focusing primarily on restoring the A&N finding.

These groups argue that EPA must use the latest cost estimates for MATS, which based on real-world experience were much lower than EPA projections at the outset of the rule in 2011.

Further, EPA should include greatly expanded benefits estimates, including benefits attributed directly to reductions in HAPs, rather than overwhelmingly to "co-benefits" of reducing particulate matter (PM). The Trump EPA faulted reliance of the Obama EPA on such PM co-benefit numbers to justify MATS.

Several environmental organizations want EPA to go further and tighten MATS emissions limits. One environmentalist says they "strongly advocated for the restoration of the appropriate and necessary finding and for EPA to strengthen the standards through a residual risk and technology review" during a recent meeting with EPA and OMB officials.

Another environmentalist says, "we are also going to urge EPA to go further and strengthen the actual air toxics standards in the MATS," because although "MATS has been effective at slashing mercury pollution, there are still 35,000 pounds of mercury emitted into the air each year," almost all of which comes from coal-fired power plants.

A third environmentalist says we "do advocate as well that EPA strengthen the standards and believe that both the law and the record concerning available control technologies supports more stringent standards."

But a fourth environmentalist says that while groups in general support a tougher MATS rule, "we don't want the [appropriate and necessary] finding slowed down" by such a rulemaking on tougher limits.

With respect to the technology review, it does seem that the "agency has been taking a serious look at strengthening MATS based on developments/technology in the sector, with the risk/technology review being a potential option." However, "I don't think that necessarily means that a (proposed) strengthened standard will be in this proposal," the environmentalist adds. Air Toxics Reviews

Tightening the MATS limits could be achieved under either Clean Air Act risk review provisions, or related technology review provisions. EPA must review both residual risks and control technologies eight years after issuing an initial air toxics rule for a sector, and conduct recurring technology reviews every eight years thereafter.

To justify tightening the standards based on risk, EPA would have to demonstrate that the power sector still presents unacceptable risks to health through its HAP emissions. Bracewell's Holmstead calls this "pretty hard to do," but some people think there is technology available to "ratchet down more on coal-fired power plants."

Under a technology review, EPA can justify a tightening of emissions limits if it finds that cost-effective new control technology exists. The case for such tougher standards could be made based on some power plants easily meeting MATS limits using their controls now in place, some observers argue.

But some in industry point out that the power generation landscape is more varied and complex now than it was at the outset of MATS in 2011, after numerous coal plant retirements or conversions to natural gas fuel, and various different technologies and approaches in use at remaining coal plants.

"There is tremendous diversity" in how utilities comply with the existing standards, one source says, and the varied generation fleet means a future rule to tighten MATS would be more complex than the first version.

Industry groups are now meeting with OMB and EPA officials, and a prime concern appears to again be regulatory certainty and stability. Major utility sector groups stressed their support for leaving the A&N finding intact, given their very large investments in MATS compliance already made, during the Trump-era rulemaking, but saw their concerns overridden then by EPA.

Among the utility sector groups meeting with OMB recently are the Edison Electric Institute (EEI), representing most of the electric utility sector, and the Class of '85 Regulatory Response Group, a group of more than 35 electric generating companies.

EEI is sticking to its message supportive of regulatory stability and therefore support for a restored A&N finding, but reserving its views on any possible tightening of MATS. "We look forward to working with EPA" on any potential revisions to the Trump RTR, Alex Bond, EEI deputy general counsel for climate and clean energy, told Inside EPA.

The Class of '85 group has also previously supported keeping the A&N finding and MATS in place, according to its comments on the proposed version of the Trump rule. -- Stuart Parker (sparker@iwpnews.com)

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EPA GRAPPLES WITH SCIENTIFIC HURDLES OF CUMULATIVE RISK AMID POLICY PUSH

09/14/2021

Risk Policy Report

Posted September 7, 2021

Top EPA scientists say they are struggling to advance the use of cumulative risk or impact analyses to better account for the risks faced by poor and minority communities even as Administrator Michael Regan seeks to advance the use of such approaches and has requested an agency review of legal authority to do so.

"The problem remains of how to bring to bear the complex interactions with the built social and chemical environment into our regulatory paradigm," Andrew Geller, the acting National Program Director of the Sustainable and Healthy Communities Research Program in EPA's research office (ORD) told members of an NAS committee tasked with advising ORD on emerging scientific and technological advances during a Sept. 1 meeting.

Geller reminded the committee that EPA and its research office has long experience with the traditional "source to outcome chemical risk assessment" approaches that have long undergirded EPA's regulatory and other decisions and acknowledged the scientific and technical challenges to implementing more holistic analyses of risk.

"The question is, how do we go from this traditional chemical risk assessment paradigm to this broader paradigm that incorporates non-chemical factors that play a role in disparate exposures and health outcomes?"

Geller's comments underscore the hurdles the Biden administration has as it seeks to bolster its assessment of risks faced by environmental justice communities that face a disproportionate burden from exposures to climate change, as well as a host of chemicals and pollutants in multiple environmental media and from a range of different sources, such as commercial, industrial or agricultural facilities, road traffic and transportation hubs.

Those factors often overlap with the adverse effects of poverty, racism and other social and economic factors, such as limited health care access, poor quality schools, violence and substandard housing, leading to a complex challenge for regulators tasked with protecting residents of those communities from environmental and other harms.

In particular, efforts to evaluate and regulate complex environmental hazards have been stymied by the "stovepiping" of environmental statutes and the EPA programs they authorize into media-specific silos -- in addition to the isolation of federal statutes and agencies' inability to address broader enforcement and permitting issues.

ORD's work on cumulative assessment dovetails with legal efforts Regan has been making to bolster EPA's authority to address cumulative impacts, including by asking agency lawyers to determine whether the agency can interpret regulations "in a different way" in order to do so.

Regan told state officials in July that in addition to discussing the issue with the Office of General Counsel, he is having "conversations with the House and Senate about potential legislative changes we need to see to give us clear authority to evaluate cumulative impacts" in the way communities are asking the agency to do.

Regan reiterated his push in a recent tour of environmental justice communities in New Jersey and New York with Democratic Sen. Cory Booker (NJ) and Rep. Paul Tonko (NY), a trip he wrote about in a Sept. 1 tweet. "The pollution adds up. This has been ongoing on in too many communities across the country. This is what we mean by cumulative impacts." Regan tweeted.

The agency is distributing \$50 million in grants from Congress' COVID relief legislation "towards EJ projects for communities like these," Regan added. Technical Challenges

Geller's remarks, however, underline how technically challenging it may be to use cumulative impact analysis in regulatory decisionmaking, even as he outlined ways in which ORD, in partnership with some EPA program offices, is advancing some aspects.

"To move forward we need to consider the environment more broadly," Geller said, adding that during the past five years, EPA has been working on research to advance understanding of the total environment including the concept of the exposome, "the cumulative measure of environmental influences and associated biological responses throughout the lifespan including exposures from the environment, diet, behavior as well as the endogenous processes resulting from these exposures."

Geller said ORD has been "engaged in outcome-based research on the total environment, especially through children's research" including projects involving "systematic reviews and meta-analyses of obesity, general cognitive ability, ADHD, social determinants of health and socio-demographic factors and particular pollutants."

Geller also focused on work EPA is doing to identify biomarkers that can be used in an allostatic load to measure overall physiological health, which he said "are really important because they are needed to get past the challenges of needing to measure everything or how we reconstruct a lifespan."

But while ORD has conducted some research in this area, Geller said that "a broader question remains, can biomarkers serve to operationalize the exposome? Will those be able to be fitted to that aggregate exposure pathway, adverse outcome pathway paradigm." Another needed challenge, he said, is understanding "how to quantify social stress to use together with these biomarkers." Health Impact Assessments

Geller and colleagues provided some examples where EPA has worked with individual communities on health impact assessments to help residents better understand cumulative impacts to develop planning for the community, or make decisions on developing brownfields. He also noted the use of some social elements in recent Integrated Science Assessments that underlie National Ambient Air Quality Standards (NAAQS) decisions on six criteria pollutants and screening level tools EPA has developed, including EJSCREEN and EnviroAtlas.

Tim Barzyk, an ORD scientist, said that he recently worked with EPA's brownfields office on a project in Rockford, IL, which sought EPA's guidance on how to develop. "We put together a range of health determinants that could be affected by development like greenspace, crime and safety," Barzyk said. He added that he and colleagues are now "synthesizing the work into a simple worksheet for other brownfields developments" trying to address questions such as "best strategies for learning about housing decisions."

But he noted that EPA's brownfields program is "an area where we had an in" to work on cumulative impact issues. "Not all programs do, at least currently. If we could identify program offices that have some of that leeway, for example [the National Environmental Policy Act (NEPA)] and Superfund because of the range of impacts they can consider -- NAAQS

would be much more challenging to impact that kind of structure without change to how EPA does things. Those mandates do effect certain types of activities but at the local level they do have cumulative impacts."

Barzyk suggested in the longer term, considering "certain types of facilities, is there anything we can take that is ubiquitous and impactful and input into bigger program" could be a way to "help feed the science into the policy making long-term."

EPA has asked the NAS committee, chaired by Dan Greenbaum, president of the Health Effects Institute, to "identify emerging scientific and technological advances from across a broad range of disciplines that [ORD] should consider in its research planning to support EPA's mission for protecting human health and the environment" and "recommend how ORD could best take advantage of those advances to meet current and future challenges during the next 10-20 years."

The agency specifically asked the committee to consider topics including "biotechnology, data science (along with artificial intelligence and machine learning), climate impacts, environmental monitoring and sensors (outdoor and indoor), and impacts of stressors on ecological and human health. The committee also will consider advances that help EPA better incorporate systems thinking into multimedia, interdisciplinary approaches." -- Maria Hegstad (mhegstad@iwpnews.com)

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EPA Grapples With Scientific Hurdles Of Cumulative Risk Amid Policy Push

09/14/2021

Defense Environment Alert

September 7, 2021 Top EPA scientists say they are struggling to advance the use of cumulative risk or impact analyses to better account for the risks faced by poor and minority communities even as Administrator Michael Regan seeks to advance the use of such approaches and has requested an agency review of legal authority to do so.

"The problem remains of how to bring to bear the complex interactions with the built social and chemical environment into our regulatory paradigm," Andrew Geller, the acting National Program Director of the Sustainable and Healthy Communities Research Program in EPA's research office (ORD) told members of an NAS committee tasked with advising ORD on emerging scientific and technological advances during a Sept. 1 meeting.

Geller reminded the committee that EPA and its research office has long experience with the traditional "source to outcome chemical risk assessment" approaches that have long undergirded EPA's regulatory and other decisions and acknowledged the scientific and technical challenges to implementing more holistic analyses of risk.

"The question is, how do we go from this traditional chemical risk assessment paradigm to this broader paradigm that incorporates non-chemical factors that play a role in disparate exposures and health outcomes?"

Geller's comments underscore the hurdles the Biden administration has as it seeks to bolster its assessment of risks faced by environmental justice communities that face a disproportionate burden from exposures to climate change, as well as a host of chemicals and pollutants in multiple environmental media and from a range of different sources, such as commercial, industrial or agricultural facilities, road traffic and transportation hubs.

Those factors often overlap with the adverse effects of poverty, racism and other social and economic factors, such as limited health care access, poor quality schools, violence and substandard housing, leading to a complex challenge for regulators tasked with protecting residents of those communities from environmental and other harms.

In particular, efforts to evaluate and regulate complex environmental hazards have been stymied by the "stovepiping" of environmental statutes and the EPA programs they authorize into media-specific silos -- in addition to the isolation of federal statutes and agencies' inability to address broader enforcement and permitting issues.

ORD's work on cumulative assessment dovetails with legal efforts Regan has been making to bolster EPA's authority to address cumulative impacts, including by asking agency lawyers to determine whether the agency can interpret regulations "in a different way" in order to do so.

Regan told state officials in July that in addition to discussing the issue with the Office of General Counsel, he is having "conversations with the House and Senate about potential legislative changes we need to see to give us clear authority to evaluate cumulative impacts" in the way communities are asking the agency to do.

Regan reiterated his push in a recent tour of environmental justice communities in New Jersey and New York with Democratic Sen. Cory Booker (NJ) and Rep. Paul Tonko (NY), a trip he wrote about in a Sept. 1 tweet. "The pollution adds up. This has been ongoing on in too many communities across the country. This is what we mean by cumulative impacts." Regan tweeted.

The agency is distributing \$50 million in grants from Congress' COVID relief legislation "towards EJ projects for communities like these," Regan added.

Technical Challenges

Geller's remarks, however, underline how technically challenging it may be to use cumulative impact analysis in regulatory decisionmaking, even as he outlined ways in which ORD, in partnership with some EPA program offices, is advancing some aspects.

"To move forward we need to consider the environment more broadly," Geller said, adding that during the past five years, EPA has been working on research to advance understanding of the total environment including the concept of the exposome, "the cumulative measure of environmental influences and associated biological responses throughout the lifespan including exposures from the environment, diet, behavior as well as the endogenous processes resulting from these exposures."

Geller said ORD has been "engaged in outcome-based research on the total environment, especially though children's research" including projects involving "systematic reviews and meta-analyses of obesity, general cognitive ability, ADHD, social determinants of health and socio-demographic factors and particular pollutants."

Geller also focused on work EPA is doing to identify biomarkers that can be used in an allostatic load to measure overall physiological health, which he said "are really important because they are needed to get past the challenges of needing to measure everything or how we reconstruct a lifespan."

But while ORD has conducted some research in this area, Geller said that "a broader question remains, can biomarkers serve to operationalize the exposome? Will those be able to be fitted to that aggregate exposure pathway, adverse outcome pathway paradigm." Another needed challenge, he said, is understanding "how to quantify social stress to use together with these biomarkers."

Health Impact Assessments

Geller and colleagues provided some examples where EPA has worked with individual communities on health impact assessments to help residents better understand cumulative impacts to develop planning for the community, or make decisions on developing brownfields. He also noted the use of some social elements in recent Integrated Science Assessments that underlie National Ambient Air Quality Standards (NAAQS) decisions on six criteria pollutants and screening level tools EPA has developed, including EJSCREEN and EnviroAtlas.

Tim Barzyk, an ORD scientist, said that he recently worked with EPA's brownfields office on a project in Rockford, IL, which sought EPA's guidance on how to develop. "We put together a range of health determinants that could be affected by development like greenspace, crime and safety," Barzyk said. He added that he and colleagues are now "synthesizing the work into a simple worksheet for other brownfields developments" trying to address questions such as "best strategies for learning about housing decisions."

But he noted that EPA's brownfields program is "an area where we had an in" to work on cumulative impact issues. "Not all programs do, at least currently. If we could identify program offices that have some of that leeway, for example [the National Environmental Policy Act (NEPA)] and Superfund because of the range of impacts they can consider -- NAAQS would be much more challenging to impact that kind of structure without change to how EPA does things. Those mandates do effect certain types of activities but at the local level they do have cumulative impacts."

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EPA OPENS CALL FOR ADVISORS TO STAFF THREE NAAQS REVIEW PANELS

09/14/2021

Risk Policy Report

Posted September 8, 2021

EPA is recruiting special panels of experts to advise the agency in its review of federal air standards for lead, nitrogen oxides (NOx), sulfur oxides (SOx) and particulate matter (PM) as the agency rebuilds its pool of advisors after the dismissal of the Trump-era Clean Air Scientific Advisory Committee (CASAC) and its recent reconstitution.

In a Federal Register notice scheduled for publication Sept. 8, EPA seeks recruits for special panels to assist CASAC in its oversight of EPA reviews of the national ambient air quality standards (NAAQS) for lead, and the "secondary" NAAQS for NOx, SOx and PM. Secondary standards are designed to protect the environment, as opposed to primary standards that are designed to protect public health.

Under the Clean Air Act, EPA must review its NAAQS for the six "criteria" pollutants every five years, although EPA often misses that deadline. The last lead review concluded in 2016, leaving standards unchanged, and EPA formally initiated the next review in 2020.

The NOx-SOx-PM review applies to the secondary standards for these pollutants, and is premised on the interrelationship of these pollutants in their environmental effects.

The review is distinct from the PM NAAQS review just concluded by the Trump EPA in December that elected to keep all PM standards, both primary and secondary limits, unchanged from 2012 levels.

The Biden EPA is now reconsidering that decision with a view to possibly tightening the standards, and is recruiting a PM special panel from 75 candidates to assist in that reconsideration.

Meanwhile, the NOx-SOx-PM ecological effects review looks at different aspects of PM pollution.

A CASAC special panel has already given its opinion on EPA's integrated science assessment (ISA) that compiles the latest policy-relevant science for the NOx-SOx-PM review.

However, following Administrator Michael Regan's "reset" of the CASAC and its panels this year, EPA is now looking to recruit a new panel to oversee the remaining steps of the review, including development of a policy assessment (PA) document giving Regan options for either revising the standards or leaving them unchanged.

For the new lead panel, "experts are being sought in the following fields, especially with respect to lead: air quality; environmental fate and transport; exposure and biomarker assessment; biokinetic modeling; toxicology; epidemiology; risk assessment; biostatistics; and ecology," EPA says.

For the NOx-SOx-PM review, EPA seeks experts in "ecological effects of atmospheric concentrations and deposition to terrestrial, wetland and aquatic ecosystems; ecosystem exposure and risk assessment/modeling; ecosystem service and resource valuation; and atmospheric sciences."

Nominations are due to the agency within 21 days, by Sept. 29.

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EPA PLANS BROAD D4 TSCA EVALUATION, OPENING DOOR TO STATE PREEMPTION

09/14/2021

Risk Policy Report

Posted September 8, 2021

EPA is proposing to expand the scope of its TSCA evaluation of the widely-used chemical octamethylcyclotetra-siloxane (D4) beyond what manufacturers requested, floating plans to include several uses environmentalists and automakers urged the agency to consider that could lead to federal preemption of future state policies.

The agency posted its proposed scope for the D4 risk evaluation on Sept. 8, detailing the various conditions of use EPA will scrutinize for "unreasonable risks" in a Toxic Substances Control Act (TSCA) evaluation, as well as other details, such as the list of vulnerable populations it intends to consider.

A Federal Register notice published the same day says EPA will take comment on the proposal for 45 days, through Oct. 25.

If EPA finalizes a broad scope it could be seen as a win for environmental groups who urged the agency to conduct a broad review of D4's many uses. But it would also aid automakers and other downstream industrial users of the chemical, who sought an evaluation of certain D4 uses in order to preempt future state regulations.

Under TSCA, when EPA evaluates a chemical's conditions of use its findings override most state and local policies governing that application. If the agency finds unreasonable risk from a use, the law requires it to craft a rule to address that risk, which could preempt state-level restrictions.

Similarly, a finding of no unreasonable risk could invalidate some prior regulations on the grounds that EPA has determined they are unnecessary.

The Sept. 8 proposal includes many conditions of use that EPA named in 2020 as potential subjects for a D4 evaluation, covering not only manufacturing, importation, disposal and distribution in commerce but also a long list of specific "processing" uses of the chemical that the agency intends to evaluate -- such for use as a reactant; for incorporation in a formulation, mixture or reaction product; and for repackaging.

The draft also names numerous commercial and consumer uses of D4 that EPA could evaluate, ranging from adhesives and "automotive care products" to textile products, cleaning products, inks, paints, laundry and dishwashing products, toys and sports equipment, animal grooming products and other plastic and rubber products.

The document says its list is based in part on the uses that manufacturers named in their request for the evaluation, as well as "information reported to EPA through Chemical Data Reporting (CDR), published literature, and consultation with stakeholders for both uses currently in production and uses whose production may have ceased."

A long list of uses is not surprising, after EPA's Aug. 31 release of final scope documents for a pair of phthalate TSCA evaluations that is much broader than requested by the American Chemistry Council's High Phthalates Panel. These also included a long list of uses the agency will evaluate, including the chemicals' presence in toys and children's products, which could also set up preemption of current or proposed state restrictions.

Congress added preemption to TSCA when it overhauled the law in 2016, in a move seen as essential to bring industry to the bargaining table on the reform effort. But that language -- including exclusions for some pre-existing programs -- has yet to be tested, raising questions about how it will be implemented if and when EPA does trigger it. Exposed Populations

EPA's outline of the populations it intends to address in the D4 evaluation also appears broader than those seen in some of the 10 Trump-era evaluations -- so far the only ones the agency has completed under the 2016 TSCA reforms.

The document identifies workers and consumers, both groups that were high priorities in those first evaluations, but also includes exposures to the general population, which were often considered to fall outside the toxics law by the prior administration's general policies.

"EPA plans to evaluate general population exposure to D4 via the oral route from drinking water, surface water, groundwater, soil, human milk, and fish ingestion; via the inhalation route from ambient air; and via the dermal route from contact with drinking water, surface water, groundwater, and soil," the document says.

The proposal also names as potentially exposed or susceptible subpopulations "children; women of reproductive age (e.g., women who may be pregnant or breastfeeding); populations with elevated fish ingestion such as subsistence fishing, indigenous, and native populations; workers; [occupational non-users]; consumers; and bystanders."

EPA further notes several consumer applications of D4 that it intends to exclude -- largely products that are regulated under the Federal Food, Drug, and Cosmetic Act (FFDCA) since TSCA excludes any products regulated by that law from its definition of a "chemical substance" subject to EPA's authority.

Specifically, the agency says it is excluding certain D4-based food packaging materials because they qualify as food additives under FFDCA; "dental bonding agents and breast implants" because they meet the FFDCA definition of a medical device; certain personal care products that fall under the FFDCA's definition of "cosmetics"; and D4's use in some over-the-counter medication that qualifies as a drug under the law.

Those exclusions appear to be narrower than was common under the Trump administration, when officials generally declined to address any chemical uses under TSCA that could be subject to another federal program whether at EPA or another agency.

The proposal also cites EPA's rule setting out a framework for risk evaluations -- one of a handful of "framework" rules that the Trump administration issued to govern implementation of the 2016 TSCA reforms -- as allowing the agency to consider risks not named in the evaluation's formal scope, even though it cannot regulate them. That could provide a hint of how the Biden EPA may handle the overlap between TSCA and other laws.

"As described in the preamble to the Risk Evaluation Rule . . . EPA may consider potential risk from non-TSCA uses in evaluating whether a chemical substance presents an unreasonable risk," the draft scope reads.

"Although EPA would not regulate non-TSCA uses, the potential exposures of non-TSCA uses may help inform the Agency's risk determination for the exposures from uses that are covered under TSCA (e.g., as background exposures that would be accounted for, should EPA decide to evaluate aggregate exposures)." -- Maria Hegstad (mhegstad@iwpnews.com)

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EPA plans to add rare federal facility site to NPL

09/14/2021

Defense Environment Alert

September 9, 2021 EPA is moving to update its Superfund National Priorities List (NPL) of contaminated sites, proposing 13 sites, including a rare federal facility site, to be added to the list while finalizing a rule that adds four other sites to the NPL.

In a Federal Register notice slated for publication Sept. 9, EPA said it is proposing an additional 13 sites to the list, including the Army Corps of Engineers' Bradford Island facility in Cascade Locks, OR, which has contamination levels of toxic polychlorinated biphenyls (PCBs) that are the highest in the Pacific Northwest.

The site, which is part of the federal Bonneville Dam complex, sits on the Columbia River, and drew a push by the states of Washington and Oregon and the Yakama Nation tribe for inclusion on the list.

An EPA source previously told Inside EPA that naming a federal facility to the list was a highly unusual move for the agency over the past decade or so. "Usually we get stopped by" the White House Office of Management & Budget (OMB), which reviews such plans and oversees inter-agency discussions on regulations affecting federal agencies, the source said.

The move also signals federal officials may be willing to take a tougher line with federal facility sites just as EPA prepares to regulate per- and polyfluoroalkyl substances (PFAS), which could open the door to many more federal sites being listed.

In a sign that such proposals can have benefits, the agency says it is withdrawing a previously proposed site -- Highway 71/72 Refinery in Bossier City, LA -- because a responsible party is now advancing the cleanup under EPA's oversight.

The action to add Bradford Island is drawing praise from Washington state and Yakama Nation officials. "This is great

news for protection of the Columbia River," Washington State Department of Ecology Director Laura Watson said in a Sept. 8 press release. "We are hopeful that this highly contaminated site will finally get the resources it needs to ensure a cleaner river with healthier salmon."

And Yakama Nation Fisheries Superfund official Rose Longoria told Inside EPA the tribe is "excited, relieved and gratified" that the "federal facility family" came forward with the listing, noting that the tribe knew that the site's score was high enough for listing, with PCBs in resident fish at 180,000 parts per billion. The tribe and states sought the listing during the Trump administration but had been unsuccessful.

Besides Bradford Island, the other 12 sites being proposed are: Lower Neponset River in Boston/Milton, MA; Meeker Avenue Plume in Brooklyn, NY; Ochoa Fertilizer Co. in Guanica, PR; Bear Creek Sediments in Baltimore County, MD; Paden City Groundwater in Paden City, WV; Westside Lead in Atlanta, GA; Galey & Lord Plant in Society Hill, SC; National Fireworks in Cordova, TN; North 5th Street Groundwater Contamination in Goshen, IN; Michner Plating -- Mechanic Street in Jackson, MI; Southeast Hennepin Area Groundwater and Vapor in Minneapolis, MN; and Unity Auto Mart in Unity, WI.

EPA says its list of proposed NPL sites includes sites with lead and PFAS, two cleanup priorities for the administration., though it did not say which of the sites is contaminated with the substances. The move comes even as the agency continues to contemplate designating certain PFAS as Superfund "hazardous substances," which would trigger EPA's authority to compel cleanup and recoup cleanup costs from responsible parties.

The agency Sept. 8 also announced it is finalizing four sites to be added to the NPL. The four sites are: Pioneer Metal Finishing, Inc. in Franklinville, NJ; Northwest Odessa Groundwater in Odessa, TX; Cherokee Zinc - Weir Smelter in Weir, KS; and Billings PCE in Billings, MT.

EPA is also pledging to update the NPL twice a year, adding sites more regularly.

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EPA PLEDGES TO BETTER COMMUNICATE RISK TO COMMUNITIES AT CLEANUP SITES

09/14/2021

Risk Policy Report

Posted September 10, 2021

EPA's waste office is promising to adopt best practices to improve the way it communicates health risks to communities at cleanup and emergency-management sites, after the Office of Inspector General (OIG) faulted its inconsistencies and lapses in guidance, including in addressing environmental justice (EJ) concerns and emerging contaminants, such as per- and polyfluoroalkyl substances (PFAS).

In a Sept. 9 report based on an audit of eight sites -- which fall under the Superfund, Resource Conservation & Recovery Act, underground storage tank or emergency management programs -- the OIG found that the Office of Land & Emergency Management (OLEM) had failed to "consistently communicate human health risks" at the sites "in a manner that allowed impacted communities to decide how to manage their risks of exposure to harmful contaminants."

In particular, it failed to consistently adhere to the agency's "Seven Cardinal Rules of Risk Communication," a 1988 EPA risk communication guidance that lays out seven general rules for communicating risk such as "accept and involve the public as a legitimate partner."

In a June 17 response to a draft version of the report, OLEM Acting Assistant Administrator Barry Breen generally agreed with the OIG's recommendations and tied planned improvements in risk communications with advancing EJ and climate-related measures.

"Improving risk communication is essential to making progress on reducing risks related to climate change and for improving outcomes in communities experiencing environmental justice concerns," he said.

"OLEM views the OIG's recommendations as an opportunity to improve our risk communication, outreach, and engagement pertaining to contaminated sites generally, but especially as we seek to address environmental injustice and climate related risks."

The OIG's push for OLEM to be more consistent across its programs in communicating health risks, sampling results and addressing EJ concerns comes as EPA is making moves to prioritize EJ throughout its programs.

And it also comes as the agency is expected to see an uptick in the number of sites at which PFAS and other emerging contaminants may require cleanup, especially if the agency moves ahead with long-delayed plans to designate certain PFAS as Superfund "hazardous substances."

Such a designation would trigger EPA's authority to compel cleanup and recoup costs from responsible parties.

The OIG's findings mark just the latest criticism of EPA's risk-communication efforts. Last year, the OIG urged EPA's air office to improve its outreach to communities subject to air emissions of the carcinogen ethylene oxide (EtO) to better communicate any risks.

But the Trump EPA rejected the recommendation, prompting the OIG to ask the Biden administration to reconsider the agency's stance, though officials have not yet responded publicly. 'Lacked Guidance'

In its audit, the OIG found, "OLEM struggled with risk communication because it lacked specific guidance to provide EPA personnel with best practices for addressing environmental justice concerns, timeliness, coordination, and clear communication," the OIG says. "Inefficiencies in the EPA's risk communication resulted in communities not being able to consistently rely on the EPA as a credible source to manage their risks."

Further, the OIG says, "Absent a national strategy, OLEM's risk communication is not consistently integrated and applied across programs and regional offices, including for sites in the same program, in similar locations, or with the same contaminants."

OLEM also lacks a measurable definition of "timely" risk communication, which means it lacks deadlines for communicating site risks and sampling results to communities, the report says.

While the OIG called on OLEM to adopt nationally consistent risk communication to improve the public's understanding of risks at contaminated sites, OLEM convinced the OIG to revise the recommendation to allow for differences among OLEM programs, and to recognize the role of states and tribes and the variability among circumstances at sites when providing risk information that meets the specific needs of communities.

Within this recommendation, OLEM agreed to "clarify best practices for program-specific risk communications process, including OLEM's expectation for processes to be consistent with scientifically grounded principles of risk communication," to clarify existing program tools and guidance, and adopt principles of EPA's new "Strategy, Action, Learning and Tools" framework to respond to administration priorities.

Specifically, OLEM will define key timelines for communications and identify who should be notified of sampling results, and use "best risk communication practices," including community advisory groups and assessments of EJ concerns.

The report notes that clearly defining who should receive sampling results is "imperative" to ensuring all potentially exposed people are made aware of risks they may face. "This is especially important in communities with environmental justice concerns or communities that are exposed to multiple sources of contamination, as they face increased risks to health and potentially other stressors, such as lower incomes and inaccessibility to healthcare," it says.

Further, OLEM commits to recommendations to determine how to communicate risks related to emerging contaminants such as PFAS, and consistently apply EPA's "Seven Cardinal Rules" guidance, the report says.

In addition, OLEM has agreed to other OIG recommendations to adopt internal controls for OLEM to periodically evaluate risk communication efforts at cleanup and emergency management sites, and to adopt internal controls for OLEM to provide community members with information to manage risks and with resources to contact for addressing health impacts if sampling results show health hazard exposures, according to the report.

On emerging contaminants, the OIG found EPA lacked complete information, for instance when it came to PFAS and to a lesser degree 1,4-dioxane. For example, while EPA and some states have taken steps to address PFAS, including states' enforceable drinking water regulations, EPA does not always highlight the most recent information regarding those contaminants on its websites for sites with PFAS contamination, the OIG says. -- Suzanne Yohannan (syohannan@iwppnews.com)

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EPA Report Linking Climate, EJ May Lay Groundwork For Future Policy

09/14/2021

InsideEPA/Climate

September 13, 2021 EPA's first-time report estimating the additional risks that environmental justice (EJ) communities face from climate change impacts may be laying the groundwork for future policies incorporating these findings but stops short of providing all the tools necessary to craft rules in a way that will provide extra benefits to the communities, sources say.

"I can see why people might be disappointed that EPA didn't take this to the next step, but I think they did exactly the right thing because we really underestimate the amount of data that we need to make good policy" to address climate change and EJ, says Jeanette Pablo, a climate and equity expert at the Clean Air Task Force (CATF).

Also, one industry lawyer says that the report "isn't terribly surprising" given that "EPA under this administration is empowered to try to create linkages between minority and socioeconomically disadvantaged groups and climate change. When you have a peer-reviewed report of this type . . . the goal is to somewhat tie the agency's hand on the bodies of scientific evidence and what [regulators] have to consider. It is laying the groundwork for policy."

The Sept. 2 peer-reviewed report is the first to look at how climate impacts are distributed across populations -- based on income, education, race and ethnicity, and age. The impacts assessed include air quality health impacts, extreme temperature and health, extreme temperature and labor, coastal flooding and traffic, coastal flooding and property, and inland flooding and property.

Among other things, it found that Black and African Americans are 40 percent more likely to live in areas with the "highest projected increases in mortality rates due to climate-driven changes in extreme temperatures."

The report was initiated by career staff last summer with EPA's Climate Change Impacts & Risk Analysis office and its Office of Atmospheric Programs.

"With this level of science and data, we can more effectively center EPA's mission on achieving environmental justice for all," EPA Administrator Michael Regan said in a statement when the findings were released.

However, the CATF's Pablo notes that the report stops short of a direct policy linkage for good reason. "We don't have the data. We don't know enough about these communities and their individual challenges to ensure policies are on target and effective."

For example, she notes that one "major barrier" is often the lack of affordable, high-speed internet. Because without it, it is much more difficult for communities to participate fully in federal and regulatory processes, "especially when 'public meetings' are webinars."

Pablo adds that the "gap between the culture and reality of vulnerable communities and the energy industry and regulators is enormous, and it's not well appreciated."

The EPA report "is a huge contribution to this critical body of knowledge," including its recognition that language can be a "huge impediment" to advancement.

Importantly, EPA acknowledges this challenge in the report, which "adopts the term 'minority' for the sake of consistency with governmental publications and datasets pertaining to environmental justice and climate change," while recognizing "important differences" in the vulnerability of individual communities under the "minority" umbrella.

Pablo says even the terms "minority" and "disadvantaged" are often viewed as stigmatizing, adding that it is important to understand that the terms environmental justice, climate justice and energy justice -- as well as equality and equity -- all have different meanings.

'Unfolding' Realization

A second environmentalist agrees that the new report captures "unfolding" realization of the intersection of structural racism and the climate crisis and sees "some really important opportunities here" because "research that brings together the science, social science and justice aspects is critical if we are going to get solutions."

Along this front, the source cites a key policy change made by the Federal Emergency Management Agency (FEMA) this month, which expanded documentation requirements to demonstrate proof of home ownership or occupancy when seeking aid following natural disasters.

For years, EJ groups have said FEMA's former policy denied such access to Black property owners who lacked registered deeds due to Jim Crow-era laws and were forced to resort to familial informal property transfer through generations.

While the policy changes were announced in the immediate wake of Hurricane Ida in Louisiana and the Northeast, FEMA later made them retroactive to apply to those seeking aid following recent flooding in Tennessee.

"These are the kinds of systemic issues built into a log of agency policies that look neutral but have impacts," the source says.

In terms of EPA policy, this source says the new report could have impacts on air quality rules given that the data show how exposure to conventional pollution exacerbates climate risks.

"This recognition that climate change is just the latest risk on top of this historic burden is critical. As we think about EPA actions to limit conventional pollution from power plants even as we move to address climate risks, we see the moment here where we can" do both.

However, the source says while policies "should" be tailored to provide more benefit to overburdened communities, the data in the report is not enough to achieve that outcome. To "make sure we are setting things right, and not just instigating policies that are blind to this history but that takes it into account so these communities are directly benefitting in a way they have not in the past. The same is true for infrastructure investments."

The data-driven approach EPA is launching should "add more heft to what EJ leaders have been pointing out for a long time" and "needs to be further developed. We've just started. It's going to take a lot more and a long time."

The industry source, however, says this type of data is not enough to tilt regulations to provide additional benefits to targeted communities but it "tees up" the possibility EPA could "go in that direction."

EPA also took the extra step of having the work peer-reviewed, which gives it more "gravitas," the source adds. But it "doesn't go so far as to make concrete recommendations . . . that anybody can hang their hat on. But it is pointing policymakers in that direction. I think this gives them cover."

However, the source adds that the kinds of climate impacts addressed in the report -- such as flooding and extreme temperatures -- are difficult to address in an EPA rule or environmental permit. "But I do think this is the kind of thing, if you are looking at Justice40 and where money is going and where EPA is prioritizing permitting and enforcement activities, you will likely see them use this type of a tool layered onto something like EJ Screen to focus efforts in particular areas." EJ Screen is an EPA mapping tool to help identify disadvantaged communities.

Mitigation Policies

The industry source adds that it is important to note that the analysis assumes no specific GHG mitigation policies will happen, which is "such a hedge, at the end it's hysterical. . . . If the analysis does not assume there will be any mitigation or adaptation policies established, then you're not getting the big picture. That's where I always get kind of cautious about these types of studies."

A second industry source finds the report "kind of curious and a little bit underwhelming" largely due to the climate impacts EPA chose to study. The biggest impact is traffic delays from high-tide flooding, the source notes. "When we think about impacts on minority communities, we don't really think about traffic delays."

Further, the source notes the only real health impact discussed is asthma related to fine particulate matter pollution, which is not usually directed to climate change. "Nothing explains that link," the source says.

Overall, the source says the report "is just part of the narrative, that climate change is one of their highest priorities government wide, and EJ is another priority. It seems the study is designed to promote these causes generally in the political world, because I don't see how a study like that can impact any EPA regulatory programs." -- Dawn Reeves (dreeves@iwpnews.com)

Facing Criticism, EPA Plans To Revise ELGs To Target PFAS, Nutrients

09/14/2021

Defense Environment Alert

September 8, 2021 EPA is planning to revise technology-based limits on discharges from the chemical manufacturing and metal finishing sectors to address per- and polyfluoroalkyl substances (PFAS) for the first time, and to revise discharge limits for slaughterhouses to reduce nutrients, handing a win to environmentalists who are pushing to toughen such standards.

The agency Sept. 8 released its Preliminary Effluent Guidelines Program Plan 15, which announces the three new rulemakings, new studies on PFAS discharges from landfills and manufacturers of textiles and carpets, and updates on plans to revise effluent limitation guidelines (ELGs) for power plants.

"To protect drinking water supplies, recreational waters, and aquatic ecosystems, it is essential that we utilize the latest scientific and technological breakthroughs in wastewater treatment," Assistant Administrator for Water Radhika Fox said in a Sept. 8 statement. "This plan illustrates one way that EPA is following science to better protect public health and the environment. Importantly and for the first time, EPA is committing to limit PFAS in wastewater discharges."

The Trump EPA in its ELG Plan 14, which was finalized in January, targeted the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) category for continued study and added the Metal Finishing category to a multi-sector study of PFAS discharges.

The Biden EPA earlier this year took comment on an advance notice of proposed rulemaking to identify industrial sources that may warrant further study for potential regulation of PFAS through national ELGs, with drinking water utilities and environmentalists urging the agency to look beyond the OCPSF sector.

Using available sampling data, EPA verified that PFAS, including legacy long-chain PFAS and short-chain replacement PFAS, are present in wastewater discharges from OCPSF facilities, the agency says in a fact sheet on the preliminary ELG plan.

The agency says it also plans to revise the metal finishing ELGs to address PFAS discharges from chromium electroplating facilities. EPA found that the use of PFAS-based mist/fume suppressants at these facilities results in wastewater containing PFAS, and data indicate that PFAS, including both legacy long-chain PFAS and short-chain replacement PFAS, are present in wastewater discharges from these facilities, the fact sheet says. Additionally, EPA identified several chromium electroplating facilities that have effectively reduced effluent concentrations of PFAS using granular activated carbon treatment.

EPA's release last week of a draft testing method for PFAS in a variety of media, including wastewater, will allow the agency to move forward with developing ELGs for reducing PFAS discharges.

Meat Processing

The preliminary plan also says EPA has completed its detailed study of the Meat and Poultry Products category, which covers slaughterhouses, meat processing plants and rendering operations, and plans to revise the ELGs, which were last updated in 2004.

"The data indicate that this industry discharges the highest phosphorus levels and second highest nitrogen levels of all industrial categories, causes treatment problems at publicly owned treatment works receiving wastewater discharges, and that the existing ELGs only apply to a small portion of the operating facilities nationwide," the EPA fact sheet says.

Environmentalists, who sued the Trump EPA over its failure to update the slaughterhouse ELGs, are claiming victory in EPA's announcement.

"It's great news that EPA, in response to our lawsuit, will be finally modernizing the standards for meat and poultry plants across the country," Sylvia Lam, an attorney with the Environmental Integrity Project (EIP), said in a Sept. 8 statement. Lam is one of the attorneys representing environmental groups in the still-pending litigation over the need for new slaughterhouse ELGs.

EIP and dozens of other environmental groups were preparing to send a petition to EPA Sept. 9 pressing the agency to update scores of ELGs for major industry sectors that were last revised decades ago. An EIP spokesman says the group

and its allies still plan to push EPA to update more of its industrial ELG categories, but will be revising their petition in light of EPA's announcement, which the spokesman calls "an important step forward."

The preliminary ELG plan also outlines the agency's intent to conduct detailed studies on PFAS in wastewater discharges from landfills as well as textile and carpet manufacturers. The agency identified landfill leachate as a source of PFAS to the environment resulting from disposal of products that contain PFAS, and identified textile and carpet manufacturing wastewater as a source of PFAS to the environment resulting from the use of PFAS chemicals in manufacturing at these facilities, the fact sheet says.

Additionally, EPA says it intends to propose a supplemental rule for the steam electric power generating ELG in fall 2022, following a July 26 announcement that the agency is initiating a rulemaking process to strengthen certain discharge limits for certain wastewater streams from coal power plants that use steam to generate electricity.

Finally, the preliminary plan provides updates to ongoing point-source category studies of the Electrical and Electronic Components category and the Multi-Industry PFAS study, and indicates that EPA does not intend to take further action on oil and gas extraction wastewater management at this time, the fact sheet says.

It adds that the preliminary plan also provides initial results from EPA's review of the following existing point-source categories: Metal Products and Machinery, Explosives Manufacturing, Canned and Preserved Seafood, Sugar Processing, Soap and Detergent Manufacturing, and Landfills.

Once published in the Federal Register, EPA will take comment on the preliminary plan for 30 days and is particularly seeking comment on four areas, according to a pre-publication version of the Federal Register notice.

These are feedback on the agency's cross-category rankings analysis and whether the agency should prioritize other point-source categories ahead of the ones EPA is studying and revising; comments on the capabilities, performance and costs of membrane treatment technologies for industrial wastewater to support the membrane technology review; comments on how best to incorporate environmental justice into the ELG planning process; and feedback on the findings of the multi-industry PFAS study, specifically findings from pulp and paper manufacturers and commercial airports.

Trump EPA water officials have questioned the Biden administration's emphasis on the use of membrane technology to treat power plant discharges. -- Lara Beaven (lbeaven@iwpnews.com)

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Gas Groups Seek More Comment Time On DOE Furnace Rule Reversal

09/14/2021

InsideEPA/Climate

September 13, 2021 Natural gas industry groups are seeking more time to comment on an Energy Department (DOE) plan, crafted to meet President Joe Biden's climate goals, that would undo the Trump administration's restructuring of efficiency rules for residential furnaces and commercial water heaters, arguing the plan would have adverse effects on the sector.

But environmentalists are urging officials to finalize the rule as proposed, saying it is needed so the administration can begin a new action to strengthen standards for the appliances.

Comments are currently due Sept. 27 on DOE's Aug. 18 proposal, but several gas groups filed comments last week pressing officials for another 60 days to submit input, citing "factual, technical, economic, regulatory, and administrative issues that require significant time to review and respond to in a meaningful manner to inform the DOE in its decision-making process," especially given the "significance of the issues."

The Sept. 7 letter from the American Gas Association (AGA), the American Public Gas Association (APGA), Spire Inc., and Spire Missouri, Inc., and the National Propane Gas Association (NPGA) argues that a comment period extension "would be consistent with DOE's prior actions in this proceeding," pointing to the Trump DOE's extension of comment periods during consideration of its rule.

DOE is developing the rule in response to Biden's Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which called on agencies to review and revise existing policies that hamper efforts to reduce greenhouse gases.

The Biden's administration's proposed rule would reverse a Jan. 15 policy that separates appliances with the newer and generally more efficient "condensing" technology -- which captures and reuses heat from flue gases rather than releasing the exhaust through a chimney -- from models with older, "non-condensing" technology.

The Trump rule effectively exempts non-condensing appliances from energy efficiency standards that apply to condensing appliances.

Specifically, the August proposal notes that currently, "in the context of residential furnaces, commercial water heaters, and similarly-situated products or equipment, use of non-condensing technology (and associated venting) constitutes a performance-related "feature" under the Energy Policy and Conservation Act [EPCA] . . . that cannot be eliminated through adoption of an energy conservation standard."

The Trump DOE developed the rule in response to a 2018 to a petition from the gas industry that requested the department reconsider EPCA's "features" provision, among other requests.

Under the Biden proposal, DOE would "return to its previous and long-standing interpretation (in effect prior to the January 15, 2021, final interpretive rule), under which the technology used to supply heated air or hot water is not a performance-related 'feature' that provides a distinct consumer utility under EPCA."

'Individual Strong Standards'

But environmental groups are pushing hard for DOE to finalize the August proposal. For example, the Appliance Standards Awareness Project (ASAP) wrote in a recent press statement that the Biden administration must finalize the August rule "before it could propose individual strong standards for residential and commercial water heaters, furnaces, and boilers."

ASAP argued the Trump-era rule is harmful to energy efficiency progress because it requires separate product classes for non-condensing gas furnaces, water heaters, and boilers, "legally separating these less-efficient models from their modern counterparts." They say DOE in its January rule "effectively block[s] itself from] setting efficiency standards for each product at a level that requires all models to use the more efficient technology."

Increasing these appliances' efficiency could spur a major reduction in greenhouse gas emissions. A 2020 report, published by the American Council for an Energy-Efficient Economy (ACEEE) and ASAP, found that residential furnaces and water heaters are "two of the biggest opportunities for the Biden administration's DOE to reduce greenhouse gas emissions through efficiency standards."

Also, ASAP noted that DOE "hasn't significantly strengthened efficiency standards for home gas furnaces since Congress set them in 1987."

ASAP Executive Director Andrew deLaski tells Inside EPA's Climate Extra that DOE "should move carefully but promptly to get this done because they'll still need to set individual efficiency standards for each of these individual products."

He noted that President Joe Biden gave DOE an end-of-the-year deadline for reversing the Trump-era furnace rules, "and there's not much time left to stay on track." Also, he noted that the topic is not "new territory for commenters" because the plan would return DOE to a long-held interpretation on the issue.

Industry Reaction

Industry groups, which support the January rule and oppose the Biden DOE proposal, argue the current rule allows non-condensing appliances to get more efficient at their own pace, without become obsolete entirely.

"Designating condensing and non-condensing natural gas heating appliances as separate product classes ensures that homes and businesses have access to energy efficient appliances while avoiding the forced removal of a low-carbon and affordable energy option for consumers," AGA wrote in a January 14 press release.

AGA spokesman Jake Reuben said the Biden administration's rule could effectively take non-condensing appliances off the market, something that could be prohibitive -- either in terms of cost or because installment of newer appliances isn't possible in every building -- for some consumers.

"New standards could eliminate non-condensing furnaces, forcing homeowners and builders to use a condensing natural gas furnace, or because of cost and logistics select an alternative heating system," read a recent AGA infographic.

Reuben also argued the group has a continued commitment to energy efficiency, noting that that gas companies invest \$3.8 million per day on efficiency programs. The group's January press release noted that it supports "DOE continuing to raise energy efficiency standards" and that "[o]ngoing innovation will continue to make efficient natural gas the option for homes and businesses looking to save money and reduce emissions."

Meanwhile, APGA regulatory affairs director Renee Lani tells Climate Extra that the August proposal "could result in additional costs imposed on Americans due to unnecessary and burdensome overregulation." As such, the group says the plan requires "sufficient time for all impacted stakeholders to thoughtfully review the proposal and provide meaningful feedback to the agency." -- Abigail Mihaly (amihaly@iwpnews.com)

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GOP Lawmakers Up Pressure On Biden To Detail Paris Climate Pledge

09/14/2021

InsideEPA/Climate

September 13, 2021 Key House and Senate Republicans are increasing pressure on President Joe Biden to detail how his administration arrived at its pledge to halve greenhouse gas emissions by 2030 under the Paris climate agreement, and the regulatory implications of meeting those cuts.

In a Sept. 9 letter, the GOP lawmakers -- who lead Republicans on key environment committees and subcommittees -- question the credibility of the pledge just as officials are preparing for the next round of United Nations-sponsored talks in Glasgow, Scotland, in November.

"Your Administration knows the importance of international accountability and it is essential that you hold" your administration "to the same standard," the GOP lawmakers argue, striking at a central point raised by Biden officials as they seek tougher emission reduction pledges from foreign leaders.

"The lack of accountability and transparency to date is even more concerning as the [Nationally Determined Contribution (NDC)] target and regulatory actions to meet this target will be the focus at the upcoming 26th United Nations Climate Change Conference of the Parties (COP26) in Glasgow," the letter argues.

The Republicans are renewing demands for release of internal analysis and communications on developing the NDC to reduce emissions under the Paris agreement, setting a Sept. 23 deadline for a "full briefing," while raising doubts about the achievability of those ambitious emission targets at a critical time for Biden's climate agenda, as Democrats are drafting legislation to implement it as part of a \$3.5 trillion reconciliation package.

"While your Administration has pledged transparency, it still has not provided any information or analysis explaining the source and impacts of emissions reductions required to meet the NDC targets," says the letter to Biden from Sens. Shelley Moore Capito (R-WV), ranking Republican on the environment committee; James Inhofe (R-OK), ranking Republican on the clean air subcommittee; along with Reps. Cathy McMorris Rodgers (R-WA), top Republican on the House Energy and Commerce Committee; and David McKinley (R-WV), top Republican on the environment and climate subcommittee.

"While federal agencies seem to know what existing rules and regulations would help meet this target, full information about how these regulatory tools will be used nationally to meet the NDC pledge is necessary for congressional deliberation, and for the public to judge the achievability of the target and the regulatory impact it would have on our country," the GOP lawmakers argue.

The lawmakers are asking for all documents and communications between the White House and federal agencies for determining the emission targets of the NDC "including how standards, incentives, programs, and support for innovation were weighed in such an analysis."

The Republican push for details on the regulatory implications of Biden's climate policy goals is not new, with lawmakers having pressed officials in past letters and at hearings.

Reconciliation Bill

But the joint letter comes at a critical time for Biden's climate agenda on Capitol Hill, with Democrats scrambling to cut a

deal on climate provisions in a budget reconciliation package that they hope to approve on a simple majority vote.

But those efforts are facing serious doubts after Senate energy committee Chairman Joe Manchin (D-WV) Sept. 12 criticized plans to include a clean electricity payment program (CEPP) in the reconciliation package.

"The transition's happening. And that clean energy standard, they want to spend billions of dollars to have utilities do what they're already doing. Makes no sense to me to pay a utility to do what they're going to do anyway," Manchin told NBC's Meet the Press on Sept. 12.

But Senate Majority Leader Chuck Schumer (D-NY) has strongly urged Democrats to back reconciliation legislation in part because it will fund policies like the CEPP that are aimed at achieving the vast majority of the emission cuts that will be required to meet Biden's climate pledge under the Paris agreement.

To underscore Schumer's point, Sen. Sheldon Whitehouse (D-RI) last week said the upcoming reconciliation legislation may be the "only shot" for Democrats to implement Biden's sweeping climate agenda.

"If Republicans take back the House or the Senate, as they say they're going to do, the prospects for serious climate legislation evaporate. That means that the only prudent conclusion to be drawn is to treat this as our only shot," Whitehouse told Politico Sept. 10. "That means we can't prevaricate and indulge ourselves in halfway measures. We've got to grapple with the climate problem effectively now, as if this was once and for all," he added.

Whitehouse is also concerned Democrats' infrastructure plans as modeled would bring reduction of only about 45 percent of 2005 emission levels -- not the 50 percent mark sought by the administration: "The five percent difference is a very big difference. Add to that an uncertainty quotient in the modeling, which could break either way, and you not only really want to try to hit 50 percent, you really want to also build in a margin of safety, particularly if this is our last chance to build a pathway to climate safety."

Schumer, by contrast, argued that gap would be filled by state and administrative actions.

Adding to that pressure, GOP lawmakers are accusing the Biden administration of circumventing congressional oversight by relying on White House appointees, such as domestic climate policy coordinator Gina McCarthy and international climate envoy John Kerry, to direct federal agencies on regulating emission cuts.

"It is clear that EPA -- the agency primarily responsible for emissions regulation -- and other agencies throughout the Executive Branch were merely 'consulted' and cannot provide the full analysis used to model emissions reductions to show how the United States would reach the 50 to 52 percent reduction target," the GOP lawmakers claim in their letter.

The Republicans accuse the president of having "empowered unaccountable officials like Gina McCarthy and John Kerry, rather than Senate-confirmed officials, with managing your Administration's environmental agenda," the letter says, adding: "These actions deprive the public and Congress of the transparent process necessary for stakeholder input, oversight, and legislative decision-making." -- Rick Weber (rweber@iwpnews.com)

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House Seeks To Boost Funds For Federal Cleanups, Lead Pipe Replacements

09/14/2021

Defense Environment Alert

September 9, 2021 Democrats on the House Energy and Commerce Committee are seeking to use their upcoming budget reconciliation legislation to boost funds provided by the bipartisan Senate infrastructure bill to replace lead drinking water pipes and speed Superfund cleanups at federal facilities, according to a just-released committee fact sheet.

According to the fact sheet, the bill will provide \$30 billion to replace lead drinking water pipes, a long-time priority for Democrats, as well as \$10 billion for cleanups at federal sites listed on the Superfund National Priorities List (NPL).

The legislation, which is expected to be marked up early next week, is being developed in accordance with resolutions approved by the House and Senate last month and is slated to be assembled into a legislative package that can move through a simple majority vote in the Senate under budget reconciliation rules.

But House and Senate Democrats are still at odds over the overall size of the package and how to pay for it, raising doubts about what provisions will ultimately be cut.

While Democrats debate the reconciliation package, House leaders have also promised a Sept. 27 vote on the bipartisan Senate infrastructure bill, which includes billions of dollars for EPA water infrastructure programs, Superfund and brownfields cleanups, climate and other programs.

Many House Democrats say they are disappointed with the spending levels in the Senate bill and have vowed to increase those funds.

For example, Rep. Paul Tonko (D-NY), chairman of the committee's climate and environment subcommittee, said he was disappointed with the \$15 billion the Senate bill provided for replacing lead pipes, especially given White House calls for as much as \$45 billion.

"They have to do better," Tonko said.

Now the committee is slated to provide the additional funds Tonko and others had sought.

"The Build Back Better Act invests \$30 billion for the full replacement of lead service lines in drinking water systems throughout the country, protecting public health, putting people to work in well-paying jobs, and making good on President Biden's commitment," the fact sheet says.

Others, like Rep. Donald McEachin (D-VA), have also indicated they plan to seek additional funds in the reconciliation package to address environmental justice concerns, such as the slow pace of Superfund cleanups.

That may explain why the House committee's bill includes \$10 billion for cleanups at federal facility sites, in addition to the \$3.5 billion the Superfund program is already slated to receive from the bipartisan bill.

The Build Back Better Act invests \$10 billion for the cleanup of Superfund sites on the NPL where federal agencies are the responsible parties, a bipartisan priority, the committee fact sheet says.

Such funds could go a long way to remediating complex and costly cleanups at highly contaminated federal sites, such as the Energy Department's Hanford site in Washington state.

In addition, the House Armed Services Committee earlier this month approved the annual defense authorization bill that provides an additional \$550 million over what the Defense Department requested for remediating per- and polyfluoroalkyl substances (PFAS). -- Jeremy Bernstein (jeremyb@iwpnews.com)

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MCCABE TEES UP 'FLESHED OUT' PLAN TO INTEGRATE EJ 'INTO ALL THAT WE DO'

09/14/2021

Risk Policy Report

Posted September 9, 2021

EPA Deputy Administrator Janet McCabe says the agency will release a "more fleshed out plan" this fall on "integrating environmental justice [EJ] into all that we do," in response to directives by President Joe Biden to elevate EJ considerations throughout decision making -- an issue that is also a top priority for EPA Administrator Michael Regan.

Speaking to a Sept. 9 virtual meeting of the Environmental Council of the States (ECOS), McCabe, EPA's second-in-command, said there is "a lot we can and should be doing [on EJ] as we develop our rules" that includes not just making "sure voices are heard, but that we are using tools available to us to understand how our regulatory approaches advance or do not advance" bringing EJ to overburdened and under-resourced communities.

EPA is already participating in cross-agency efforts on lead-poisoning prevention, which McCabe called a "key area" of focus for the initiative across the country.

"We're really integrating [EJ] into all of our thinking," McCabe said, adding some of the focus will be "explicit," such as "grants specifically directed to overburdened communities" while other parts will be "more in the fabric of how we do our

work."

Her remarks echo those of Regan, the first Black man to run the agency. For example, he told EPA's National Environmental Justice Advisory Council (NEJAC) in March that "your work will be front and center" of the agency's EJ efforts. He said it is "not an exaggeration to say that environmental justice will underpin all of our work" and that it is "our obligation to empower the people who've been left out of the conversation for too long."

At the ECOS meeting, McCabe mentioned the state organization's new EJ work group -- which she noted has a "staggering" 27 members and is illustrative of the high level of interest. She is "eager to stay connected to the conversations that we have with the" work group "because you guys are thinking about the very same things."

EJ seeks to address "really hard issues, situations that have built up over centuries, in many instances, and many times they look unsolvable and beyond the reach of the environmental agencies, and yes there are things not within our capacity to fix, but much is," she said.

McCabe also spoke generally about the work EPA is doing and its invaluable relationship with states and tribes, particularly on climate change and EJ, "areas where innovation is crucial."

EPA's Office of Environmental Justice and its External Civil Rights Compliance Office have already begun engaging with the ECOS work group to identify areas ripe for collaboration, from permitting to enforcement to delivering benefits to overburdened communities, she added. "Advancing environmental justice is absolutely shared work" and critical to achieve "a cleaner, more equitable future," reduce greenhouse gas emissions, "and deal with changes that are wreaking havoc, literally, on our communities. . . . Climate change and environmental justice are intertwined and top of mind."

Further, McCabe said that EPA is "back in the business of reducing GHGs," including resuming international leadership, advancing a variety of regulatory efforts and building adaptation and resilience capabilities.

EPA is also developing a new climate adaptation plan, as directed by an early executive order from Biden, she said.

This will include direct technical assistance to communities to integrate climate adaptation with a focus on economic recovery and neighborhood revitalization through EPA's Adaptation & Resource Center.

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NAS PANELIST FAULTS EPA'S NAAQS STUDY-SELECTION PROCESS AS 'BLACK BOX'

09/14/2021

Risk Policy Report

Posted September 7, 2021

A National Academy of Sciences (NAS) panelist is criticizing EPA's process for selecting studies to support its national ambient air quality standards (NAAQS) as a "black box," even as the panel heard a presentation from an agency advisor who generally praised other aspects of the agency's standard-setting process.

The NAAQS process is in general "by far, the most open" to public participation and scrutiny when compared with other risk assessment and standard-setting processes, Dan Greenbaum, a frequent EPA advisor and president of the Health Effects Institute (HEI), an independent air quality research body, told the panel in a Sept. 2 presentation.

In one key area, however, the NAAQS review process might not be as transparent as possible, suggested NAS panelist Joel Kaufman, a physician-epidemiologist at the University of Washington. Kaufman said that EPA staff's procedures for weighing evidence were still "a bit of a black box."

Greenbaum agreed that there is some lack of clarity over exactly how EPA weighs and selects the most policy-relevant studies for NAAQS reviews from the thousands of studies published.

But Greenbaum called EPA's weight-of-evidence approach "a powerful method, strengthened by multiple lines of evidence."

EPA holds meetings in public of its Clean Air Scientific Advisory Committee (CASAC), which conducts oversight of EPA staff's review documents and advises the Administrator on setting the ultimate standards, Greenbaum noted.

The NAS panel began its ongoing study, "Assessing Causality from a Multidisciplinary Evidence Base for National Ambient Air Quality," earlier this year in response to a request from the Trump-era CASAC.

The panel is charged with reviewing EPA's NAAQS process and is mulling the transparency of the methods relative to other agencies' standard-setting procedures.

Under CASAC's Trump-era leadership, the panel, led by industry consultant Tony Cox, called into question EPA staff's methods of determining "causality."

Cox, a skeptic of EPA staff's approach and risk assessment methodology, called for evidence to clear a higher bar before a pollutant can be said to "cause" a health effect.

He was also critical of epidemiological studies that formed the basis for EPA staff's calls to tighten particulate matter (PM) NAAQS, concerned that such studies are prone to bias and confounding by other factors than air pollution.

The Trump EPA opted not to tighten the standards, but the Biden EPA is now reconsidering that decision.

Cox also led criticism of EPA's overall "causality framework," calling for the current NAS review of the framework. EPA's method rates the likelihood of exposure to an air pollutant causing a particular adverse health effect.

The Biden administration has since replaced the Trump-era CASAC, re-appointing two members, including professor of medicine Mark Frampton -- who frequently clashed with Cox and advocated for tougher NAAQS -- and Georgia air regulator James Boylan.

The NAS panel is not the only one assessing EPA's NAAQS process. Among other projects, HEI is currently sponsoring "accountability studies" designed to prove or disprove the claimed health benefits of regulatory measures to reduce air pollution. This field aims to test the findings of epidemiological studies in particular. IARC Monographs

In his presentation, Greenbaum chose for comparison the monographs prepared by the International Agency for Research on Cancer (IARC), a branch of the World Health Organization (WHO), to identify environmental factors that pose cancer hazards.

He contrasted the open NAAQS process with IARC's monographs development, which he says allows only a limited number of observers. And he also cited WHO's air quality guidelines process which does not allow observers and has only very limited peer review, lasting two weeks.

Greenbaum also noted differences in their classification systems. For example, IARC's classification system groups pollutants into groups including Group 1 (carcinogenic to humans), Group 2A (probably carcinogenic to humans), Group 2B (possibly carcinogenic to humans) and Group 3 (not classifiable as to its carcinogenicity to humans).

The NAAQS framework defines pollutants as "causal", "likely to be causal", "suggestive of, but not sufficient to infer, a causal relationship", "inadequate to infer a causal relationship" or "not likely" to be causal. Greenbaum noted that a finding of "causal" or "likely to be causal" "sets the stage" for EPA to conduct a regulatory impact analysis for that pollutant in rulemaking, and cost-benefit economic analysis.

Greenbaum noted that IARC has diverged in at least one finding from EPA. In 2009, EPA found in a science assessment that there was "suggestive" evidence of PM exposure causing lung cancer. In 2013, IARC reviewed air pollution in general, and PM specifically, and concluded that both were Group 1 human carcinogens that "cause" lung cancer.

EPA in 2019 upon further review did not agree that PM "causes" lung cancer, rather that PM was "likely to cause" lung cancer.

The NAS panel is due to report in 2022 to EPA with its conclusions on the adequacy of the current NAAQS causality framework, and the results will inform EPA's reviews of NAAQS going forward. -- Stuart Parker (sparker@iwpnews.com)

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Details emerge on House Clean Electricity Performance Program

09/10/2021

Energy Finance Daily

The House Energy and Commerce Committee is considering a proposal that would establish a new U.S. Department of Energy program to provide grants for power companies that increase their percentage of clean energy by certain margins each year and impose fees on those that do not.

The proposed Clean Electricity Performance Program, or CEPP, is being proposed as part of a broader infrastructure package that lawmakers are expected to consider next week. Other key provisions of the broader plan include a methane fee and a plan to invest billions in a more reliable, cleaner energy transmission grid, according to a fact sheet released by the committee Sept. 9.

The CEPP

Under the CEPP proposal, the DOE would establish a new program that would complement existing clean energy tax incentives by providing grants or payments to electricity suppliers from 2023 through 2030 based on how much clean electricity each supplier provides to customers.

To qualify for such a grant, electricity suppliers would have to boost the amount of clean electricity they supply to customers by 4% compared to the previous year. The supplier would receive \$150 for each MWh of clean electricity provided that exceeds the amount supplied the previous year by 1.5%. Electricity supplies must use the grants exclusively to benefit customers, including for direct bill assistance, investments in qualified clean electricity and energy efficiency, and worker retention.

An electricity supplier that does not meet the criteria by increasing its clean electricity percentage by at least 4% over the prior year would owe a payment to the Energy Department based on its shortfall. For example, if an electricity supplier only increases its clean energy by 2%, the supplier would owe \$40 for each MWh that represents the 2% shortfall.

The CEPP would also provide electricity suppliers the option to defer a grant or a payment for up to two consecutive years, according to the fact sheet. The proposed program defines clean electricity as generation "with a carbon intensity of no more than 0.10 metric tons of carbon dioxide equivalent per megawatt-hour."

Inspired by a push to establish a national clean energy standard, some Democrats earlier proposed a similar payment program to incentivize load-serving entities to add clean power sources and penalizes those that do not meet certain environmental standards. Democratic leaders have said such a program will help the nation achieve Biden's goal of generating 80% of power from carbon-free generators by 2030.

More than a dozen conservation organizations recently launched a campaign aimed at excluding natural gas from the program or clean energy standard. But some industry members have said such climate targets and anti-gas campaigns

are unreasonable, noting the important role natural gas could play in the transition to cleaner energy sources while ensuring a reliable power supply.

Whether the program described in the latest fact sheet would exclude natural gas from the program is still unclear.

Mitch Jones, policy director of Food & Water Watch, said the fact sheet is still short on details, "but on our reading, the carbon intensity standard ... would not allow natural gas to count as clean energy." The devil may be in the details, however, in regard to how the Department of Energy would define the capture of carbon from gas plants, Jones said. "We've argued all along that they shouldn't be counted," considering the record at functioning carbon capture plants, the policy director said.

Other provisions

The broader reconciliation plan also includes \$9 billion for a more reliable, cleaner energy grid and grants for states that site new wholesale transmission projects. It would also offer grants and loans to support the construction and modernizing of grid infrastructure across the seams between the eastern and western interconnections, domestic interties with the Electric Reliability Council of Texas, and for offshore wind projects, among other efforts.

The plan would establish a fee on methane emissions from the oil and gas industry, building on a U.S. Environmental Protection Agency program that requires about 8,000 large emissions sources to report their annual emissions. The fee would recognize the cleanest performers and hold companies responsible for their own leaks and emissions, according to the fact sheet.

Industry groups opposed a proposal earlier in 2021 that established a methane fee based on a company's production and midstream handling volumes within a basin and the total annual methane emissions rate of all companies within the basin.

The latest plan would also see the federal government continue to wade into a movement to electrify buildings that has largely played out at the state and local levels in recent years. The legislation proposes \$18 billion to fund home energy efficiency and appliance electrification rebates.

Clean energy and climate advocates view the budget reconciliation process as their best shot to pass major legislative provisions to meet President Joe Biden's aggressive decarbonization targets.

Bills advancing through the process are not subject to the Senate's filibuster and need only a simple majority in both legislative chambers to pass. However, such legislation must have a budgetary impact to be included.

Maya Weber and Ellie Potter are reporters with S&P Global Platts. S&P Global Market Intelligence and S&P Global Platts are owned by S&P Global Inc.

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Illinois lawmakers advance energy compromise with nuke support to full House

09/10/2021

Energy Finance Daily

Democratic leaders in the Illinois House of Representatives on Sept. 9 unveiled the latest version of comprehensive energy legislation designed to support the state's nuclear plants and transition to a clean energy economy.

Following nearly three hours of debate, the Executive Committee of the Illinois General Assembly voted 9-6 along party lines Sept. 9 to send an amended version of Senate Bill 2408 to the floor of the House. Gov. J.B. Pritzker, a Democrat, has signaled support for the proposal.

"I look forward to this amendment advancing in the House and Senate and making its way to my desk where I will sign this historic agreement into law," Pritzker said in a Sept. 9 written statement.

The House floor amendment to S.B. 2408 filed by Assistant Majority Leader Marcus Evans Jr. also has garnered key support among environmental and labor groups.

As amended, the bill provides support for the state's carbon-free nuclear generation through a competitive "carbon

mitigation credit procurement plan" administered by the Illinois Power Agency. The contracts for winning bidders would begin June 1, 2022, and end May 31, 2027. The carbon mitigation credit is defined as a "tradable credit that represents the carbon emission reduction attributes of one megawatt-hour of energy produced from a carbon-free energy resource."

The legislation states that the Illinois Power Agency "shall not accept bids for contracts that exceed a customer protection cap equal to the baseline costs of carbon-free energy resources." These baseline costs begin at \$30.30 per MWh in 2022 and increase to \$34.50/MWh beginning June 1, 2026.

"An Environmental Protection Agency consultant forecast ... projects that a carbon-free energy resource has the opportunity to earn on average approximately \$30.28 per [MWh] for the sale of energy and capacity during the time period between 2022 and 2027," the latest version of the legislation, called the Energy Transition Act, states. "Therefore, the sale of carbon mitigation credits provides the opportunity to receive an additional amount per [MWh] in addition to the projected prices for energy and capacity."

Exelon Corp. is just days away from shutting down the two-unit, 2,346-MW Byron Generating Station, followed by the 1,805-MW Dresden nuclear plant in November absent government-approved subsidies to keep them from losing money.

"While we currently have no choice but to continue preparing for their premature retirement, we have established off-ramps that will allow us to reverse that decision if lawmakers pass legislation with enough time for us to safely refuel the plants," Exelon spokesperson Paul Adams said in an email. "To be clear, Byron will run out of fuel and will permanently shut down on September 13 unless legislation is enacted. We have been clear that we cannot refuel Byron on September 13 or Dresden in November absent policy changes."

Exelon also said it could retire the 2,384-MW Braidwood Generating Station and 2,313-MW LaSalle County Generating Station "in the next few years" if the operating economics do not improve.

The Senate's previously approved version of comprehensive clean energy legislation provided nearly \$700 million in subsidies for the Byron, Dresden and Braidwood plants, operated by Exelon subsidiary Exelon Generation Co. LLC, but the bill lacked support from the governor and key stakeholders.

The sticking point revolved around emissions reductions at the 1,630-MW coal-fired Prairie State Energy Campus and the retirement of City Water, Light and Power, or CWLP, coal assets. CWLP is the municipal utility for Springfield, Ill.

Pritzker previously called for the closure of Prairie State by 2035 and balked at a plan that would cut emissions 50% by 2040 to keep the plant online, reports indicate.

Under the compromise, Prairie State and all "public" greenhouse gas emitting units must reduce their carbon emissions by 45% no later than Jan. 1, 2035, and "permanently reduce" carbon emissions to zero no later than Dec. 31, 2045. The bill calls for privately owned units that "use coal or oil as a fuel" to eliminate carbon emissions by Jan. 1, 2030.

The bill is designed to transition Illinois to 100% renewable energy by 2050.

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To keep coal plants online, AEP asks W.Va. regulators to up share of costs

09/10/2021

Energy Finance Daily

West Virginia ratepayers may have to take on more of the cost burden if the state wants to keep three large coal plants online beyond 2028.

American Electric Power Co. Inc. utilities Appalachian Power Co. and Wheeling Power Co. petitioned West Virginia regulators to reopen their case (docket 20-1040-E-CN) and consider increasing the state's jurisdictional share of environmental compliance costs at the 2,900-MW John E. Amos, 1,299-MW Mountaineer and 1,560-MW Mitchell (WV) power plants.

The utilities are seeking an order by Oct. 13 that the Public Service Commission of West Virginia wants them to proceed with projects needed to comply with the U.S. Environmental Protection Agency's Effluent Limitation Guidelines, or ELG, on all three plants or to identify which plants and which units can proceed with compliance work. In addition, the utilities want state regulators to acknowledge "that additional investments and [operations and maintenance] expenses at the

plants will be needed prior to 2028, and will be the responsibility of West Virginia customers, if the plants are to operate beyond 2028."

Also, the utilities want the West Virginia PSC to commit to authorizing cost recovery for environmental compliance and operations and maintenance investments as long as they are "reasonably and prudently incurred."

In early August, the West Virginia PSC granted a certificate of public convenience and necessity that allows Appalachian Power and Wheeling Power to make the modifications necessary to comply with federal environmental regulations under the ELG and Coal Combustion Residuals, or CCR, rules and recover a portion of the costs from ratepayers.

"Although the companies did not provide an estimate of West Virginia's jurisdictional share of the total costs ... the commission estimates that it would be \$169.55 million given a [50%] ownership interest in Mitchell and a 41.1[%] allocation of investments in Amos and Mountaineer," the PSC wrote in its order.

Cost recovery sought in Kentucky, as well as Virginia

The utilities have also sought cost recovery for compliance work from state regulators in Kentucky and Virginia.

The Mitchell plant in Marshall County, W.Va., is co-owned by AEP subsidiaries Kentucky Power Co. and Wheeling Power. Appalachian Power owns the other two plants.

The Kentucky Public Service Commission (docket 2021-00004) approved Kentucky Power's request to pursue construction projects for the Mitchell plant to comply with the CCR rule. The Kentucky PSC, however, rejected Kentucky Power's request for work designed to comply with the ELG rule.

The Virginia State Corporation Commission on Aug. 23 approved (SCC docket PUR-2020-00258) about \$27.4 million in cost recovery through an annual rider for upgrades and other construction projects needed at the Amos and Mountaineer plants to comply with the CCR rule.

However, the Virginia State Corporation Commission rejected approval of about \$4.2 million in initial rider recovery for upgrades needed to comply with the ELG rule. Regulators left open the possibility of Appalachian Power reapplying for approval of these investments.

Appalachian Power testified that the total Virginia jurisdictional share of the ELG investments would be about \$60 million.

In their filing with the West Virginia PSC, Appalachian Power and Wheeling Power provided updated cost estimates that show the total cost of CCR and ELG compliance work at all three plants is now \$448.3 million. The annual revenue requirement for West Virginia would be about \$48 million for full compliance work given the state's jurisdictional share of CCR costs and full allocation of ELG expenses, according to the utilities.

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